



Department  
for Culture  
Media & Sport

# Updated Draft Framework Agreement

November 2016



## **Updated Draft Agreement Between Her Majesty's Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation**

This document has been published following the debates in the devolved legislatures, the House of Lords on 12th October 2016 and the House of Common on 18th October 2016. It is an updated version of the draft Charter published on 15 September (Cm 9317) and contains minor and technical changes. The Charter is now expected to be submitted to Privy Council for consideration.



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# **AN AGREEMENT BETWEEN HER MAJESTY'S SECRETARY OF STATE FOR CULTURE, MEDIA AND SPORT AND THE BRITISH BROADCASTING CORPORATION**

THIS DEED is made the [ ] 2016 BETWEEN:

HER MAJESTY'S SECRETARY OF STATE FOR CULTURE, MEDIA AND SPORT ("the Secretary of State") and

THE BRITISH BROADCASTING CORPORATION whose chief office is at Broadcasting House, Portland Place, London W1A 1AA ("the BBC").

## **BACKGROUND**

- (1) The BBC was first incorporated, for a limited period of time, by a Royal Charter granted on 20th December 1926. Subsequently, further Royal Charters were granted to the BBC to continue its existence as a corporation. The most recent of these Charters ("the 2006 Charter") was granted on 19th September 2006 and provides for the continuance of the BBC for a period ending on 31st December 2016 ("the current Charter period").
- (2) The Secretary of State is applying to Her Majesty for the grant of a further Charter ("the 2016 Charter") for the continuance of the BBC for a further period ending on 31st December 2027 and which makes provision for the process of transition from the 2006 Charter to the 2016 Charter to begin before the end of the current Charter period.
- (3) The 2006 Charter is complemented by an Agreement ("the 2006 Agreement") made by a Deed between the Secretary of State and the BBC dated 30th June 2006 (and amended by further Deeds dated 23rd March 2010, 11th February 2011 and 13th September 2011).
- (4) Among other things, the 2006 Agreement confers, by virtue of section 198 of the Communications Act 2003 ("section 198"), certain regulatory functions, and related powers and duties, on the Office of Communications.
- (5) The 2016 Charter contains provisions, particularly article 53, about the concept of a Framework Agreement.
- (6) It is appropriate that the 2006 Agreement should be revoked and replaced by a new Agreement which will be a Framework Agreement for the purposes of the 2016 Charter and make suitable provision to complement the provisions of the 2016 Charter, including provision for the purposes of section 198.
- (7) This Agreement has been prepared with the cooperation of the Office of Communications. The Office of Communications shall be consulted should any future amendments to this Agreement affect their functions in respect of the BBC.

NOW in view of these considerations, THIS DEED WITNESSES that the Secretary of State and the BBC agree with one another as follows.

## **INTRODUCTION**

### **1. Interpreting this Agreement**

In reading this Agreement, the interpretation provisions in clauses 74 to 82 should be borne in mind.

### **2. Status of this Agreement as a “Framework Agreement” for BBC Charter Purposes**

This is a Framework Agreement for BBC Charter purposes. The significance of this is explained in the Charter (see in particular article 53).

### **3. Commencement of this Agreement (and revocation of previous Agreements)**

(1) This Agreement will for most practical purposes take effect as from the beginning of the Effective Date, but that general statement must be read subject to paragraph (2).

(2) In technical terms, this Agreement shall come into force on the day after the day on which the Charter is granted (see the date given in the formal text following article 72 at end of the Charter), but in order to facilitate the transition from the constitutional and other arrangements in force under the 2006 Charter to those under the 2016 Charter, Schedule 4 modifies this Agreement’s effect (in relation to times both during and after the Transitional Period, as defined in the Schedule to the 2016 Charter).

(3) The Agreements listed in Schedule 1 are revoked as from the end of the day before the Effective Date, but are also subject to the provisions of the Schedule to the Charter and Schedule 4.

(4) In this clause:

“the 2006 Charter” means the Royal Charter for the continuance of the BBC for the period ending on 31st December 2016; and

“the 2016 Charter” means the Royal Charter for the continuance of the BBC for the period ending on 31st December 2027.

### **4. The independence of the BBC**

The parties to this Agreement affirm their commitment to the independence of the BBC as stated in article 3 of the Charter. By entering into this Agreement, the BBC has voluntarily assumed obligations which restrict, to some extent, its future freedom of action.

## **OPERATING FRAMEWORK**

### **5. Operating framework - general provisions**

- (1) Ofcom must prepare and publish an Operating Framework which must contain provisions Ofcom consider appropriate to secure the effective regulation of the activities of the BBC as set out in the Charter and this Agreement.
- (2) The Operating Framework must, in general terms, set out how the regulatory regimes for the activities of the BBC will operate and must contain a clear explanation of the roles and responsibilities of, and relationship between, the BBC and Ofcom in operating these regimes.
- (3) The Operating Framework may impose requirements on the BBC.
- (4) The Operating Framework must set out how Ofcom will enforce compliance by the BBC of the specified requirements (set out in clause 59) and the procedures to be followed. This must include-
  - (a) the handling and resolution of complaints referred to them or considered in accordance with clause 57;
  - (b) investigations by Ofcom under clause 58;
  - (c) the exercise of the power to give directions under article 49(2) of the Charter;
  - (d) the exercise of the power to fine the BBC under article 49(3) of the Charter.
- (5) Ofcom must consult the BBC and any person Ofcom consider appropriate before publishing the Operating Framework.

## **UK PUBLIC SERVICES**

### **6. Introduction**

The BBC must determine whether an activity is to be carried out as a UK Public Service, a non-service activity, a trading activity or a commercial activity.

### **7. UK Public Services**

- (1) The UK Public Services must fulfil the Mission and promote one or more of the Public Purposes and consist of the services specified by or under Schedule 1.
- (2) The BBC must comply with the regulatory conditions in an operating licence set under clause 13 in providing the UK Public Services.
- (3) The BBC may carry out an activity as a change to a UK Public Service or as a new UK Public Service in accordance with this clause provided that the activity falls within paragraph (4).
- (4) An activity falls within this paragraph if it is aimed primarily at users in the United Kingdom involving the provision of output (which may include output provided by other organisations) supplied by means of—

- (a) television, radio and online services; or
  - (b) similar or related services which make output generally available and which may be in forms or use technologies which either have not previously been used by the BBC or which have yet to be developed.
- (5) The BBC must prepare and publish a policy setting out how it will consider material changes to the UK Public Services, including whether or not a change is potentially material, and how it will consult with interested persons where appropriate. The policy must set out the assessment it will carry out and the procedures it will follow. Such assessments and procedures must be proportionate to the nature of the change.
- (6) The BBC may only make a material change to the UK Public Services where-
- (a) the BBC has carried out a public interest test on the proposed change;
  - (b) the BBC has determined that the public interest test is satisfied; and
  - (c) Ofcom determine that the BBC may carry out the proposed change.
- (7) For the purposes of this clause, a material change means-
- (a) the carrying out of any activity as a new UK Public Service; and
  - (b) any change to a UK Public Service which may have a significant adverse impact on fair and effective competition.

## **8. Public Interest Test**

- (1) The BBC must be satisfied that-
- (a) the proposed change to the UK Public Services contributes to the fulfilment of the Mission and the promotion of one or more of the Public Purposes;
  - (b) it has taken reasonable steps to ensure that the proposed change has no adverse impact on fair and effective competition which is not necessary for the effective fulfilment of the Mission and the promotion of the Public Purposes; and
  - (c) the public value of the proposed change justifies any adverse impact on fair and effective competition,
- (‘the public interest test’).
- (2) In carrying out the public interest test, the BBC must consider the scale and likelihood of any public value relative to the scale and likelihood of any adverse impact on fair and effective competition. It is recognised that the determination will require qualitative assessments to be made and that direct comparison of factors relating to public value and factors relating to risks to fair and effective competition may not be possible.
- (3) Where the public interest test is satisfied and the BBC would like to implement the proposed material change, the BBC must publish the proposed change and send a copy to Ofcom.

## **9. Material changes**

- (1) Where the BBC has published a proposed change, Ofcom must assess whether the change is a material change.

- (2) Where Ofcom decide that a proposed change is a material change, Ofcom must notify the BBC and proceed to make a determination under clause 11 having carried out a competition assessment under clause 10 or a shorter (less than 6 months) assessment which considers the elements of clause 10(3)(a) to (d). Ofcom must act expeditiously and must normally commence an assessment immediately. They may only delay the commencement of an assessment where there are reasonable grounds to do so.
- (3) Where Ofcom has notified the BBC that they do not consider that a proposed change is a material change, the BBC may carry out the proposed change.
- (4) Where a period of six weeks has elapsed since the publication of the proposed change, and Ofcom has not notified the BBC as to whether it considers the proposed change is a material change, the BBC may carry out the proposed change.
- (5) Where Ofcom consider the information published by the BBC under clause 8(3) does not enable them to carry out an assessment, they must, as soon as possible, require the BBC to provide such additional information as may be necessary.
- (6) Where Ofcom consider that a change to the UK Public Services is a material change and the BBC has failed to publish the proposed change, Ofcom may direct the BBC-
  - (a) to carry out a public interest test and, if the test is satisfied, publish the proposed change; or
  - (b) to stop carrying out the change in accordance with such directions as Ofcom consider appropriate.

## **10. Competition assessment**

- (1) Ofcom may carry out a competition assessment of a proposed material change to the UK Public Services.
- (2) Where Ofcom decides under clause 9(2) to carry out a competition assessment, they must complete the assessment and make a determination under clause 11 within six months of that decision. Ofcom may allow for a longer period in exceptional circumstances.
- (3) In carrying out a competition assessment Ofcom must-
  - (a) review the procedures the BBC has followed in carrying out the public interest test;
  - (b) review the BBC's assessment of the public value of the proposed change to the UK Public Services;
  - (c) assess any adverse impact of the proposed change on fair and effective competition; and
  - (d) assess whether the public value of the proposed change justifies any adverse impact on fair and effective competition.
- (4) In carrying out the competition assessment, Ofcom must consider the scale and likelihood of any public value relative to the scale and likelihood of any adverse impact on fair and effective competition. It is recognised that the determination will require

qualitative assessments to be made and that direct comparison of factors relating to public value and factors relating to risks to fair and effective competition may not be possible.

## **11. Determination by Ofcom**

- (1) Where Ofcom considers that a proposed change published by the BBC under clause 8(3) is a material change, Ofcom must determine-
  - (a) the BBC must reconsider any element of the public interest test or the BBC must follow such further procedures, as Ofcom consider appropriate;
  - (b) the BBC may carry out the proposed change to the UK Public Services;
  - (c) the BBC may carry out the proposed change in accordance with such modifications to the service, or subject to such conditions, Ofcom consider appropriate; or
  - (d) the BBC may not carry out the proposed change.
- (2) Ofcom may only reach a determination under paragraph (1)(c) or (d) following a competition assessment under clause 10.

## **12. Competition review**

- (1) Ofcom may carry out a competition review of a UK Public Service where there are reasonable grounds to believe that the carrying out of a UK Public Service is having a significant adverse impact on fair and effective competition.
- (2) Ofcom may require the BBC to carry out an assessment following such procedures as Ofcom consider appropriate to consider the public value of a UK Public Service and adverse impacts on fair and effective competition.
- (3) If in carrying out a competition review Ofcom find that there is a significant adverse impact on fair and effective competition Ofcom must assess whether the public value of the service justifies any adverse impact (both current and future) on fair and effective competition.
- (4) In carrying out the competition review, Ofcom must consider the scale and likelihood of any public value relative to the scale and likelihood of any adverse impact on fair and effective competition. It is recognised that the determination will require qualitative assessments to be made and that direct comparison of factors relating to public value and factors relating to risks to fair and effective competition may not be possible.
- (5) Having had regard to the competition review Ofcom may determine-
  - (a) the BBC may continue to carry out the UK Public Service; or
  - (b) the BBC may carry out the service in accordance with such modifications to the service, or subject to such conditions, Ofcom consider appropriate.
- (6) For the purposes of this clause, a reference to a UK Public Service includes a reference to a part of that service.

### **13. Operating licence**

- (1) Ofcom must set and publish one or more operating licences for the UK Public Services.
- (2) Ofcom must impose on the BBC the regulatory conditions set out in, and in accordance with, Schedule 2 (operating licence regulatory conditions).
- (3) Ofcom may impose such further regulatory conditions they consider appropriate for requiring the BBC, in carrying out the UK Public Services, to fulfil the Mission and promote the Public Purposes.
- (4) Ofcom may impose further regulatory conditions they consider appropriate for requiring the BBC to secure that the audiences in Scotland, Wales, Northern Ireland and England are well served.
- (5) Before setting an operating licence Ofcom must consult the BBC and any person Ofcom consider appropriate.

### **14. Performance measures**

- (1) By virtue of article 20(3)(d) of the Charter, the BBC is required to determine performance measures (and targets for those measures where appropriate) and to collect such information as is necessary to assess the performance of the UK Public Services in fulfilling the Mission and promoting the Public Purposes.
- (2) By virtue of article 46(4) of the Charter, Ofcom may determine performance measures (further to those determined by the BBC under article 20(3)(d)) they consider appropriate, and may collect such information as is necessary, to assess the performance of the UK Public Services in fulfilling the Mission and promoting the Public Purposes.
- (3) Before determining the performance measures, the BBC and Ofcom respectively must consult each other and any person they consider appropriate.
- (4) Ofcom may require the BBC to collect such information as Ofcom consider necessary for the performance measures.
- (5) The BBC and Ofcom must publish at least annually the performance measures and evidence about performance against those measures.

### **15. Operating Framework - UK Public Services**

- (1) The Operating Framework must set out how Ofcom will regulate the UK Public Services (including carrying out competition assessments and reviews, and making determinations under clauses 9 to 12 and the procedures to be followed). This must include the following matters-
  - (a) how Ofcom will assess whether a proposed change to a UK Public Service is a material change;

- (b) the procedures Ofcom consider appropriate for carrying out a competition assessment and making a determination (including timing and requirements for consultation);
  - (c) the circumstances in which Ofcom will carry out a competition assessment and how Ofcom will carry out an assessment; and
  - (d) the circumstances in which Ofcom will carry out a competition review and how it will carry out a review.
- (2) The Operating Framework must set out how Ofcom will set and administer the operating licence regime and the procedures to be followed. This must include the following matters-
    - (a) the procedures for setting the regulatory conditions in an operating licence;
    - (b) considerations Ofcom will have regard to in setting regulatory conditions.
  - (3) The Operating Framework must set out how Ofcom will set performance measures and the procedures to be followed.
  - (4) The Operating Framework must include requirements Ofcom consider appropriate to protect fair and effective competition. This may include the following matters-
    - (a) the distribution of the UK Public Services;
    - (b) the commissioning of programmes or material to be included in the UK Public Services.

## **NON-SERVICE ACTIVITIES**

### **16. Non-service activities**

- (1) The BBC may carry out non-service activities in accordance with this clause.
- (2) 'Non-service activities' mean activities which are not UK Public Services but which directly or indirectly fulfil the Mission and promote one or more of the Public Purposes.
- (3) The BBC must ensure that a non-service activity supports or enables the provision of the UK Public Services and the World Service by securing that the non-service activity-
  - (a) is secondary in nature;
  - (b) bears a proper sense of proportion to the UK Public Services and the World Service; and
  - (c) is appropriate to be carried on by the BBC alongside the UK Public Services and the World Service.
- (4) The BBC must prepare and publish a policy setting out how it will consider material changes to the non-service activities (including carrying out a new activity), including whether or not a change is potentially material, and how it will consult with interested parties where appropriate. The policy must set out the assessment it will carry out and the procedures it will follow. Such assessments and procedures must be proportionate to the nature of the change.
- (5) The BBC may only make a material change to the non-service activities where-

- (a) the BBC has carried out a public interest test on the proposed change;
  - (b) the BBC has determined that the public interest test is satisfied; and
  - (c) Ofcom determine that the BBC may carry out the proposed change.
- (6) For the purpose of this clause, a material change means any change to the non-service activities which may have a significant adverse impact on fair and effective competition.

## **17. Public Interest Test**

- (1) The BBC must be satisfied that-
- (a) the proposed material change to the non-service activities contributes, directly or indirectly, to the fulfilment of the Mission and the promotion of one or more of the Public Purposes;
  - (b) it has taken reasonable steps to ensure that the proposed change has no adverse impact on fair and effective competition which is not necessary for the effective fulfilment of the Mission and the promotion of the Public Purpose; and
  - (c) the public value of the proposed change justifies any adverse impact on fair and effective competition,
- (‘the public interest test’).
- (2) In carrying out the public interest test, the BBC must consider the scale and likelihood of any public value relative to the scale and likelihood of any adverse impact on fair and effective competition. It is recognised that the determination will require qualitative assessments to be made and that direct comparison of factors relating to public value and factors relating to risks to fair and effective competition may not be possible.
- (3) Where the public interest test is satisfied and the BBC would like to implement the proposed material change, the BBC must publish the proposed change and send a copy to Ofcom.

## **18. Material changes**

- (1) Where the BBC has published a proposed change, Ofcom must assess whether the change is a material change.
- (2) Where Ofcom decide that a proposed change is a material change, Ofcom must notify the BBC and proceed to make a determination under clause 20 having carried out a competition assessment under clause 19 or a shorter (less than 6 months) assessment which considers the elements of clauses 19(3)(a) to (d). Ofcom must act expeditiously and must normally commence an assessment immediately. They may only delay the commencement of an assessment where there are reasonable grounds to do so.
- (3) Where Ofcom has notified the BBC that they do not consider that a proposed change is a material change, the BBC may carry out the proposed change
- (4) Where a period of six weeks has elapsed since the publication of the proposed change, and Ofcom has not notified the BBC as to whether it considers the proposed change is a material change, the BBC may carry out the proposed change.

- (5) Where Ofcom consider the information published by the BBC under clause 17(3) does not enable them to carry out an assessment, they must, as soon as possible, require the BBC to provide such additional information as may be necessary.
- (6) Where Ofcom consider that a change to the non-service activities is a material change and the BBC has failed to publish the proposed change to them, Ofcom may direct the BBC-
  - (a) to carry out a public interest test and, if the test is satisfied, publish the proposed change; or
  - (b) to stop carrying out the change in accordance with such directions as Ofcom consider appropriate.

## **19. Competition assessment**

- (1) Ofcom may carry out a competition assessment of a proposed material change to the non-service activities.
- (2) Where Ofcom decides under clause 18(2) to carry out a competition assessment, they must complete the assessment and make a determination under clause 20 within six months of the decision. Ofcom may allow for a longer period in exceptional circumstances.
- (3) In carrying out a competition assessment Ofcom must-
  - (a) review the procedures the BBC has followed in carrying out a public interest test;
  - (b) review the BBC's assessment of the public value of the proposed change to the non-service activities;
  - (c) assess any adverse impact of the proposed change on fair and effective competition;
  - (d) assess whether the public value of the proposed change justifies any adverse impact on fair and effective competition.
- (4) In carrying out the competition assessment, Ofcom must consider the scale and likelihood of any public value relative to the scale and likelihood of the any adverse impact on fair and effective competition. It is recognised that the determination will require qualitative assessments to be made and that direct comparison of factors relating to public value and factors relating to risks to fair and effective competition may not be possible.

## **20. Determination by Ofcom**

- (1) Where Ofcom considers that a proposed change published by the BBC under clause 17 is a material change, Ofcom must determine-
  - (a) the BBC must reconsider any element of the public interest test or the BBC must follow such further procedures, as Ofcom consider appropriate;
  - (b) the BBC may carry out the proposed change to the non-service activities;

- (c) the BBC may carry out the proposed change in accordance with such modifications to the activity, or subject to such conditions, Ofcom consider appropriate; or
  - (d) the BBC may not carry out the proposed change.
- (2) Ofcom may only reach a determination under paragraph (1)(c) or (d) following a competition assessment under clause 19.

## **21. Competition review**

- (1) Ofcom may carry out a competition review of a non-service activity where there are reasonable grounds to believe that the carrying out of a non-service activity is having a significant adverse impact on fair and effective competition.
- (2) Ofcom may require the BBC to carry out an assessment following such procedures as Ofcom consider appropriate to consider the public value of a non-service activity and adverse impacts on fair and effective competition.
- (3) If in carrying out a competition review Ofcom find that there is a significant adverse impact on fair and effective competition, Ofcom must assess whether the public value of the activity justifies any adverse impact (both current and future) on fair and effective competition.
- (4) In carrying out the competition review, Ofcom must consider the scale and likelihood of any public value relative to the scale and likelihood of any adverse impact on fair and effective competition. It is recognised that the determination will require qualitative assessments to be made and that direct comparison of factors relating to public value and factors relating to risks to fair and effective competition may not be possible.
- (5) Having had regard to the competition review Ofcom may determine-
- (a) the BBC may continue to carry out the non-service activity;
  - (b) the BBC may carry out the activity in accordance with such modifications to the activity service, or subject to such conditions, Ofcom consider appropriate.

## **22. Operating Framework - Non-Service Activities**

- (1) The Operating Framework must set out how Ofcom will regulate the non-service activities (including carrying out competition assessments, competition reviews and making determinations under clauses 18 to 21 and the procedures to be followed). This must include the following matters-
- (a) how Ofcom will assess whether a proposed change to a non-service activity is a material change;
  - (b) the procedures for carrying out a competition assessment and making a determination (including timing and requirements for consultation);
  - (c) the circumstances in which Ofcom will carry out a competition assessment and how Ofcom will carry out an assessment;
  - (d) the circumstances in which Ofcom will carry out a competition review and how Ofcom will carry out a review.

- (2) The Operating Framework may include further requirements that Ofcom consider appropriate to protect fair and effective competition.

## **COMMERCIAL ACTIVITIES**

### **23. Commercial activities**

- (1) The BBC may carry out commercial activities in accordance with this clause.
- (2) “Commercial activities” means activities which-
- (a) fit with the Mission and the Public Purposes;
  - (b) are not funded by licence fee revenue whether directly or indirectly;
  - (c) are undertaken with a view to generating a profit (regardless of whether the profit generated will or may be used to fund the fulfilment of the Mission or promotion of the Public Purposes). This means that something can be a commercial activity even if it also fulfils the Mission or promotes the Public Purposes, if it is done with a view to generating profit.
- (3) In paragraph (2), “commercial activities” include participation by subsidiaries of the BBC in joint ventures or other forms of commercial partnership with persons or bodies other than the BBC or a subsidiary within the BBC’s commercial arm.
- (4) The BBC as a corporation must not directly undertake any commercial activities and they must be provided through one or more commercial subsidiaries.
- (5) In carrying out the commercial activities, the BBC must be satisfied that all of the following criteria are met-
- (a) the activities must fit with the Mission and the Public Purposes;
  - (b) the activities must exhibit commercial efficiency; and
  - (c) the activities must not jeopardise the good reputation of the BBC or the value of the BBC brand; and
  - (d) the activities must not, as a result of the relationship of the activity with the UK Public Services, trading activities or non-service activities, distort the market or create an unfair competitive advantage,
- (“the commercial criteria”).
- (6) In carrying out the commercial activities, the BBC must comply with the trading and separation rules in the Operating Framework.
- (7) Where the commercial activity consists of participation in a joint venture or other form of commercial partnership with a person or body other than the BBC or a subsidiary within the BBC’s commercial arm, the BBC must use its best endeavours to ensure that—
- (a) the participation complies with the commercial criteria; and
  - (b) any services provided, or activities undertaken, by way of or through the venture or partnership meet the commercial criteria.

- (8) A commercial activity is to be considered to fit with the Mission and the Public Purposes if—
- (a) it is appropriate to be carried on in association with the fulfilment of the Mission and the promotion of the Public Purposes (albeit through the separate framework required by this paragraph); and
  - (b) it is connected, otherwise than merely in financial terms, with the ways in which the BBC fulfils its Mission and promotes the Public Purposes.
- (9) A commercial activity does not cease to be considered to fit with the Mission and the Public Purposes just because the activity includes activities which in themselves do not meet the requirements of paragraph (8), provided such activities support or enable other activities that do meet those requirements.
- (10) The BBC may make changes to the commercial activities in accordance with this clause.
- (11) The BBC must prepare and publish a policy setting out how it will consider material changes to the commercial activities, including whether or not a change is potentially material, and how it will consult with interested parties where appropriate. The policy must set out the assessment it will carry out and the procedures it will follow to consider whether the commercial criteria have been met. Such assessments and procedures must be proportionate to the nature of the change.
- (12) The BBC may only make a material change to the commercial activities where-
- (a) the BBC has carried out a commercial test on the proposed change;
  - (b) the BBC has determined that the commercial test is satisfied; and
  - (c) Ofcom determine that the BBC may carry out the proposed change.
- (14) For the purposes of this clause, a material change means-
- (a) the carrying out of a new type of activity as a commercial activity (for example, an activity previously carried out as a UK Public Service, non-service activity or trading activity); or
  - (b) a significant change to the BBC's commercial arm, where there is a significant risk that the change may, as a result of the relationship of the activity with the UK Public Services, trading activities or non-service activities, distort the market or create an unfair competitive advantage.

#### **24. Commercial test**

- (1) The BBC must be satisfied that the proposed material change meets the commercial criteria ("the commercial test").
- (2) Where the commercial test is satisfied and the BBC would like to implement the proposed material change, the BBC must publish the proposed change and send a copy to Ofcom.

#### **25. Material changes**

- (1) Where the BBC has published a proposed change, Ofcom must assess whether the change is a material change.
- (2) Where Ofcom decide that a proposed change is a material change, Ofcom must notify the BBC and proceed to make a determination under clause 27 having carried out an assessment under clause 26. Ofcom must act expeditiously and must normally commence an assessment immediately. They may only delay the commencement of an assessment where there are reasonable grounds to do so.
- (3) Where Ofcom has notified the BBC that they do not consider that a proposed change is a material change, the BBC may carry out the proposed change.
- (4) Where a period of six weeks has elapsed since the publication of the proposed change, and Ofcom has not notified the BBC as to whether it considers the proposed change is a material change, the BBC may carry out the proposed change.
- (5) Where Ofcom consider the information published by the BBC under clause 24(2) does not enable them to carry out an assessment, they must, as soon as possible, require the BBC to provide such additional information as may be necessary.
- (6) Where Ofcom consider that a change to the commercial activities is a material change and the BBC has failed to publish the proposed change, Ofcom may direct the BBC-
  - (a) to carry out a commercial test and, if the test is satisfied, publish the proposed change; or
  - (b) to stop carrying out the change in accordance with such directions as Ofcom consider appropriate.

## **26. Trading and separation assessment**

- (1) Ofcom may carry out an assessment of whether a proposed material change to the commercial activities meets the requirements of clause 23(5)(d).
- (2) In carrying out an assessment Ofcom must assess whether the proposed change, as a result of the relationship of the activity with the UK Public Services, trading activities or non-service activities, is likely to distort the market or create an unfair competitive advantage.

## **27. Determination by Ofcom**

Where Ofcom considers that a proposed change published by the BBC under clause 24 is a material change, Ofcom must determine-

- (a) the BBC may carry out the proposed change to the commercial activities;
- (b) the BBC may carry out the proposed change in accordance with such modifications to the activity, or subject to such conditions, Ofcom consider appropriate in order to comply with the trading and separation rules (see clause 28(1)); or
- (c) the BBC may not carry out the proposed change.

## **28. Operating Framework**

- (1) The Operating Framework must include requirements Ofcom consider appropriate to ensure that the commercial activities do not, as a result of their relationship with the UK Public Services, trading activities or non-service activities, distort the market or gain an unfair competitive advantage (“the trading and separation rules”). This may include requirements-
  - (a) to ensure appropriate separation between the BBC and its commercial subsidiaries including by requiring that-
    - (i) the commercial activities are carried out in accordance with normal market principles, including making a commercial rate of return; and
    - (ii) the relationship between the BBC and its commercial subsidiaries are at arm’s length on commercial terms,
  - (b) to ensure appropriate transparency as to the relationship between the BBC and its commercial subsidiaries including-
    - (i) the provision by the BBC to Ofcom of financial reports; and
    - (ii) the publication by the BBC of information to demonstrate that the relationship of the commercial activities with the UK Public Services, trading activities and non-service activities meet the trading and separation rules without jeopardising the ability of the commercial subsidiaries to operate effectively in the market.
- (2) The Operating Framework must set out how Ofcom will regulate the commercial activities (including carrying out assessments and making determinations under clauses 26 and 27) and the procedures to be followed. This must include the following matters-
  - (a) how Ofcom will assess whether a proposed change to the commercial activities is a material change;
  - (b) the procedures for carrying out an assessment and making a determination (including timing, requirements for consultation where appropriate); and
  - (c) the circumstances in which Ofcom will carry out a trading and separation assessment and how Ofcom will carry out an assessment.

## **29. BBC reviews of commercial activities**

- (1) The BBC must carry out and publish two or more detailed periodic reviews on whether the commercial activities carried out by the BBC through commercial subsidiaries specified in paragraph (3) meet the commercial criteria.
- (2) In carrying out a periodic review, the BBC must set and publish measures and targets for those measures for each subsidiary to assess whether the activity exhibits commercial efficiency subject to not jeopardising the ability of the subsidiaries to operate effectively in the market.
- (3) This clause applies to any major commercial subsidiary including-
  - (a) BBC Worldwide Limited (company number: 1420028);
  - (b) BBC Global News Limited (company number: 4514407);

- (c) BBC Studioworks Limited (company number: 3593793);
- (d) any new subsidiary of significant size (particularly any such subsidiary established to carry out the activity of making television programmes).

(4) The first review must be completed by 31st December 2018.

### **30. Ofcom reviews of commercial activities**

Where a new commercial subsidiary of the BBC of significant size is established to carry out the activity of making television programmes, Ofcom must, within two years of its establishment, consider whether to carry out a review on whether the activity the subsidiary carries out meets the requirements of the trading and separation rules.

## **TRADING ACTIVITIES**

### **31. Trading activities**

(1) The BBC may carry out trading activities in accordance with this clause.

(2) Trading activities mean the following activities which are commercial in nature but are not to be treated as commercial activities-

- (a) the selling of assets or of excess capacity in the BBC's resources held for use by the UK Public Services (including any capacity on a television multiplex service that is under the BBC's control);
- (b) the provision of facilities and services which are ancillary to the provision of the UK Public Services and in respect of which any charge is imposed primarily for the purpose of recovering the costs or expenses of the provision, even if other factors (for example, rounding the charge for convenience) make a profit likely;
- (c) licensing or otherwise disposing of rights in anything created for the purposes of the UK Public Services or the World Service;
- (d) sub-licensing or otherwise disposing of rights which are not required for the promotion of the Public Purposes and which were acquired incidentally by the BBC as part of a larger package of rights which, as a whole, was acquired only because the package included rights which were required for the promotion of the Public Purposes;
- (e) trading or other activity between the BBC and the BBC's commercial arm, or between different parts of the BBC's organisation;
- (f) securing up-front investment from third parties in BBC content.

(3) In carrying out the trading activities, the BBC must comply with the requirements, in the Operating Framework, to protect fair and effective competition.

### **32. Operating Framework**

The Operating Framework must set out how Ofcom will regulate the trading activities and the procedures to be followed (including such requirements Ofcom consider appropriate to protect fair and effective competition).

## THE WORLD SERVICE

### 33. The World Service

- (1) The BBC must provide the World Service.
- (2) The World Service consists of the broadcast or other distribution of output, and the delivery of services, in English and other languages, aimed primarily at users outside the UK, and is defined in the World Service Licence issued under clause 34.
- (3) The BBC may also transmit World Service output in the UK.
- (4) The BBC will be responsible—
  - (a) when setting the overall strategic direction of the BBC, for defining the position of the World Service within that strategy,
  - (b) for setting the budget for the World Service (subject to paragraph (5)) and having regard, in particular, both to the need to provide sufficient funding for the delivery of the World Service as it is defined in the World Service Licence and to the interests of the public); and
  - (c) for assessing the performance of the World Service.
- (5) The budget for the World Service must be at least £254 million for each of the financial years from 2017/18 to 2021/22.
- (6) Taking account of the strategy and the budget it has set, the BBC will agree with the Foreign Secretary—
  - (a) objectives, priorities and targets for the World Service;
  - (b) the languages in which the World Service is to be provided; and
  - (c) any changes to the matters mentioned in sub-paragraphs (a) and (b) including the start of a new service in a language not currently served or ceasing entirely to provide services in a particular language.
- (7) For the purposes of paragraph (6)(a)—
  - (a) an “objective” is a medium- to long-term ambition for the World Service, expressed in general terms;
  - (b) a “priority” is an expression of the relative importance of such objectives; and
  - (c) a “target” is a measurable criterion of the public value delivered by the World Service (based, in particular, on the reach, quality, impact and value for money that it achieves), which must be consistent with the objectives and priorities set for the Service.
- (8) Without limiting the ability of the BBC and the Foreign Secretary to agree other objectives under paragraph (6), the objectives for the World Service must contribute to the fulfilment of the Mission and the promotion of the Public Purposes including providing high-quality news coverage, current affairs and factual programming to international audiences, firmly based on British values of accuracy, impartiality, and fairness.

- (9) In addition to the specific provisions of paragraphs (4) to (8), the relationship between the Foreign Secretary and the BBC for the provision of the World Service is based on the following principles—
- (a) the BBC has full editorial and managerial independence and integrity in the provision of the World Service, within the structure of the Charter and this Framework Agreement;
  - (b) in particular, the BBC will decide the most effective and efficient way of delivering the World Service; and
  - (c) subject to compliance with the Charter and this Framework Agreement the BBC may generate other sources of income for the World Service.
- (10) The BBC should ensure that it always has such information regarding international developments and conditions in countries outside the UK, and must consult with the Foreign Secretary to obtain from him such information, as it considers it needs to help it plan and prepare the provision of the World Service.
- (11) The BBC must set, publish, review periodically and observe guidelines designed to maintain high standards of editorial integrity and ensure high-quality in the World Service, having regard to the editorial guidelines applying to the UK Public Services (see paragraph 2 of Schedule 3) to the extent the standards are relevant to the circumstances of the World Service.
- (12) Clause 36 makes provision about how the BBC may, by mutual agreement, accept UK Government funding for defined projects connected with the World Service.
- (13) Expenditure on the World Service, or some part of it, or activities connected with it, may be classified by the UK Government as Official Development Assistance (ODA). The Treasury is responsible for forecasting in each financial year the level of expenditure to be classified as ODA for purposes of the OECD Development Assistance Committee led by DfID based on the level of the previous year. The BBC must provide early warning of changes that are likely to affect this forecast and must provide, when requested, such information as the Treasury, DfID and FCO requires for this purpose.
- (14) The BBC may make adjustments to the budgets and spending of the World Service, independently based on editorial judgements and the requirement to fulfil the World Service remit as set in the World Service Licence. Nothing that the UK Government does, either to notify World Service spending as ODA or to make future forecasts about ODA notification, may in any way constrain that independence.

#### **34. The World Service Licence**

- (1) The BBC must set and publish a licence for the World Service under this clause.
- (2) Subject to paragraphs (3) to (5), it is for the BBC decide the form and contents of the licence, including the activities it covers and how it is structured to accommodate the various language and country services of the World Service.

- (3) The licence will (amongst other things) define the characteristics of the World Service, including its remit and scope, and will also record—
  - (a) the objectives, priorities and targets for the World Service, and
  - (b) the languages in which the World Service is to be provided, agreed with the Foreign Secretary under clause 33.
- (4) The licence will also—
  - (a) specify the budget for the World Service;
  - (b) set out how the World Service will contribute to the promotion of the Public Purposes and achieve its objectives; and
  - (c) contain such other matters relating to the World Service as the BBC considers appropriate.
- (5) The licence must make provision about making World Service output available within the UK, where the BBC has decided to do so under clause 33(3).

### **35. Performance reporting and reviews of the World Service**

- (1) The BBC must report in reasonable detail on the performance of the World Service, both in its annual report (see article 37 of the Charter) and elsewhere as appropriate.
- (2) The Chair of the Board of the BBC and the Foreign Secretary (or their nominated representatives) will meet at least annually to review the performance of the World Service against the objectives, priorities and targets agreed under clause 33 (including discussing a written report from the BBC on the performance of the Service against those objectives, priorities and targets and giving consideration to whether they should be changed).
- (3) The BBC must review the World Service as a whole at least once every five years and such a review should, in particular, consider the performance of the World Service in delivering what is set out in the licence.
- (4) The BBC may at its discretion also conduct more frequent reviews of particular aspects of the World Service.
- (5) The BBC must publish any review carried out under this clause.
- (6) In conducting reviews the BBC must take appropriate account of the views of the public in the United Kingdom and of people across the world who make up the actual or intended audience of the World Service.
- (7) In carrying out a periodic review under article 51 of the Charter, Ofcom must have regard to the performance of the World Service in contributing to the fulfilment of the Mission and the promotion of the Public Purposes.

### **36. World Service: agreed supplementary funding**

- (1) The BBC may enter into an agreement under which the UK Government provides funding to enable the BBC to undertake particular defined projects connected with the World Service.
- (2) Any such project must be—
  - (a) consistent with clause 33 (World Service) (and especially clause 33(9)(a) and (12)) and the World Service Licence; and
  - (b) undertaken for a specific period or a specific purpose.
- (3) An agreement under paragraph (1) must provide for the UK Government to meet in full the BBC's costs relating to the project in question (which, accordingly, may not be funded out of sums paid to the BBC under clause 49 (licence fee funding) and clause 52 (compensation for free television licences). Any sum paid to the BBC shall not be counted towards the budget for the World Service under clause 33(5).

## **THE SPECIFIED ACTIVITIES**

### **37. Specified activities**

The BBC must carry out the specified activities set out in clauses 38 to 48.

### **38. Wales**

The BBC must continue to support the provision of output in the Welsh language in Wales.

### **39. Partnership and funding model for S4C services**

- (1) The BBC must provide funding to the S4C Authority ("S4C") for the purpose of providing the S4C Services in accordance with this clause.
- (2) The BBC and S4C must have the shared aim of working together to observe and safeguard the independence of both, and to make the best use of such funding in the interests of audiences (and in particular those who speak Welsh), so far as is consistent with their respective obligations under the Charter, this Agreement and relevant legislation.
- (3) The amount payable by the BBC to S4C under this clause is-
  - (a) in each of the financial years from 2017/2018 to 2021/2022, £74,500,000; and
  - (b) in each of the financial years from 2022/2023 to 2027/2028, an amount to be determined pursuant to the process referred to in paragraph (4).

- (4) Following the completion of the review of S4C<sup>1</sup>, the Secretary of State, following consultation with the BBC and S4C, must set out the process for determining the amounts to be paid under paragraph (3)(b) to be included in this Agreement.
- (5) The BBC must agree with S4C accountability arrangements under which S4C regularly gives the BBC such assurance as the BBC may reasonably require that funding provided by the BBC under this clause is being used properly and efficiently in the provision and broadcasting or other distribution of the S4C Services.
- (6) The BBC and S4C must also agree arrangements which continue the wider strategic partnership between the BBC and S4C. The BBC and S4C may from time to time review and, where appropriate, revise these arrangements and the arrangements referred to in paragraph (5).
- (7) In this clause, “the S4C Services” means:
  - (a) the television channel known as S4C (but referred to in the Communications Act 2003 as “S4C Digital”); and
  - (b) any television channel or other service approved under section 205 of the Communications Act 2003.

#### **40. Scotland**

- (1) The BBC must continue to support the provision of output in the Gaelic language in Scotland.
- (2) Through its partnership with MG Alba, the BBC must continue to provide a television service supporting MG Alba’s function of securing that a wide and diverse range of high-quality programmes in Gaelic are broadcast or otherwise transmitted so as to be available to persons in Scotland.

#### **41. Northern Ireland**

The BBC must continue to support the provision of Irish language and Ulster-Scots output on television, radio and online in Northern Ireland.

#### **42. BBC Monitoring**

- (1) BBC Monitoring must be provided in accordance with the Monitoring Agreement agreed between the BBC and any one of Her Majesty’s Principal Secretaries of State or a person acting on behalf of the Crown, but the BBC has full editorial and managerial independence and integrity in the provision of BBC Monitoring, within the structure of the Charter and this and any other Framework Agreement.
- (2) BBC Monitoring consists of the monitoring (and where applicable, recording) of media output that is openly available from around the world and includes the provision of

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<sup>1</sup> The S4C review was announced on 3 February 2016: <https://www.gov.uk/government/news/uk-government-protects-funding-for-welsh-broadcaster-s4c--2>

related services such as the preparation and distribution, usually in electronic form, of products such as reports and digests of international news, comment and other information.

- (3) BBC Monitoring is provided in the public interest and for the benefit of users, including—
  - (a) the BBC's news services; and
  - (b) the UK Government and other public authorities.
- (4) The Monitoring Agreement shall govern the specification, management, operation, performance monitoring, dispute handling and funding of the services to be provided; and the Agreement made under this clause in place of the scheme dated 21st March 2013 must be agreed so as to take effect on the Effective Date.
- (5) Without limiting the scope of what other matters may be included in it, the Monitoring Agreement must specify the monitoring services to be provided out of the budget set and funded by the BBC under this clause ("the core services"); and must —
  - (a) define the position of BBC Monitoring within the BBC's overall strategy;
  - (b) provide that the BBC is responsible for approving the high-level strategy for BBC Monitoring and the budget for the core services;
  - (c) provide that no sums paid to the BBC under clauses 49 (licence fee funding) and clause 52 (compensation for free television licences) may be used in the provision of any additional services, except in the case of any that are requested by, and provided to, users within the BBC; and
  - (d) make provision for agreeing changes to the core services and for the resolution of disputes between the Cabinet Office and the BBC.
- (6) Any reference in this clause to "additional services" is a reference to monitoring services which the BBC agrees (whether in or under the Monitoring Agreement or otherwise) to provide in addition to the core services; and accordingly, additional services may be provided only on terms requiring them to be funded in full from a source outside the budget for core services set pursuant to paragraph (5), such as by the Cabinet Office or any other person (whether or not a public authority) using them or requesting their provision.
- (7) In providing BBC Monitoring, the BBC must maintain high standards of editorial integrity and quality, including observing any particular content standards applicable to the UK Public Services, to the extent that the BBC considers those standards relevant to the circumstances of BBC Monitoring.
- (8) In providing monitoring services, other than such additional services (if any) as are provided solely for the use of the BBC or other users which are not public authorities, the BBC is to be regarded as an agent of the Crown, and to be acting in the public interest.
- (10) In this clause—

“monitoring services” means the activities of monitoring and recording media output and the provision of related services, as mentioned in paragraph (2); and

references to “media output” include—

- (a) any sound, text, data, still or moving pictures or other content carried or accessed by means of an electronic communications network or an electronic communications service (within the meaning of the Communications Act 2003);
- (b) text or pictures in any print medium; and
- (c) the output of any news agency.

#### **43. Local television**

- (1) The BBC must continue to comply with the arrangements for supporting the provision of local television services by local media companies pursuant to clause 95A of the 2006 Agreement (“the 2011 arrangements”). In particular, the arrangements-
  - (a) must continue to include provision for direct financial support to be given by the BBC or by support in kind, or by a combination of such methods (subject to paragraphs (2) and (3));
  - (b) must continue to ensure that-
    - (i) local television services supported under the arrangements meet the needs of members of the public in the localities they serve;
    - (ii) value for money overall is secured;
    - (iii) the support is provided and used consistently with the BBC’s other obligations, including in a manner that promotes its Mission and one or more of the BBC’s Public Purposes; and
  - (c) must not—
    - (i) require the BBC to agree support arrangements separately with individual local media companies, decide which local media companies to support in any locality, or acquire content from local media companies unless the BBC is satisfied that it is suitable for inclusion in a UK Public Service and that the price represents value for money; or
    - (ii) permit any local media company in receipt of BBC support under this clause which carries out other activities in addition to those which are required in order to provide local television services to use that support to benefit (directly or indirectly) those other activities.
- (2) Insofar as the arrangements make provision for the BBC to give assistance by meeting capital costs to support local television services—
  - (a) the cost to the BBC of such support must not exceed £25 million, including—
    - (i) any sums duly paid under the funding agreement made on 8 July 2013 between the BBC and Comux UK Ltd (company number 07967418); and
    - (ii) any other sums which according to that funding agreement fall to be counted within the sum of £25 million; and
  - (b) the BBC shall not be obliged to meet any capital cost incurred after 31st July 2017.

- (3) Insofar as the arrangements make provision for the BBC to give assistance by acquiring from a local media company content which has been included in a local television service provided by that company with a view to using it in BBC services—
  - (a) the cost to the BBC shall not exceed £15 million including any sums already paid under the 2011 arrangements;
  - (b) such support shall be available to a local media company only during the period of three years immediately following the date on which they first began to provide the local television service from which it is proposed to acquire content; and
  - (c) the BBC's obligation to acquire content under the arrangements ends on 31st March 2020.
  
- (4) For the purposes of this clause—
  - (a) “local media company” means a body corporate which-
    - (i) holds a licence to provide one or more local television services; and
    - (ii) began to provide such service on or before 31st July 2017; and
  - (b) “local television service” means a service whose principal purpose is to provide users with television programmes centred on a locality or localities below the regional level and which falls within a description of service included in an order under section 244 of the Communications Act 2003 (local television).

#### **44. Digital TV Coverage**

- (1) The BBC must continue (subject to paragraph (4)) to ensure UK households can continue to receive the UK Public Television Services in digital form through a television aerial in accordance with the Coverage Plan.
- (2) For the purposes of paragraph (1), whether a service is available to a household does not depend on whether the equipment necessary to enable the service to be viewed is in fact installed at the premises occupied by the household.
- (3) “Coverage Plan” means the plan drafted by the BBC setting out how it broadcasts its TV services after digital switchover, with full technical details of the digital TV transmission network approved by the Secretary of State for Culture, Media and Sport on 31st October 2008.
- (4) The BBC may amend the Coverage Plan only with the approval of the Secretary of State.
- (5) The Secretary of State must consult Ofcom before approving an amendment to, or replacement of, the Coverage Plan.
- (6) The Secretary of State may, by a direction, require the BBC to alter any Coverage Plan, but must not do so without first consulting the BBC and Ofcom.

#### **45. Digital Radio**

- (1) The BBC shall continue to use all reasonable endeavours to support the transition from analogue to digital radio.
- (2) The BBC must use all reasonable endeavours to co-operate promptly and in good faith, with—
  - (a) commercial radio operators and holders of licences to provide radio multiplex services;
  - (b) any department of the UK Government involved in the planning or implementation of digital radio switchover; and
  - (c) any other persons notified to the BBC for the purposes of this clause by the Secretary of State.
- (3) Following a notification to the BBC from the Secretary of State about the intention to set a digital switchover date, the BBC and the Secretary of State must make an agreement (for example, by amending this Agreement) covering the following areas—
  - (a) to ensure that substantially the same proportion of households in the UK that, at the date of this Agreement, receive BBC national radio services in analogue form by means of terrestrial broadcasting (that is to say, through a radio aerial in the home), can receive those services in digital form, subject to a full value for money assessment by the BBC;
  - (b) to ensure enhancements are made to the coverage of BBC local radio services in digital form, subject to value for money, whilst continuing to provide the analogue local radio services in analogue form by means of terrestrial broadcasting where this provides value for money;
  - (c) for the BBC to work in partnership with commercial radio operators in relation to the joint provision of information to the public about digital radio switchover;
  - (d) to develop appropriate arrangements for supporting the most vulnerable listeners who would be at most risk of losing access to the BBC's radio services after switchover; and
  - (e) to make specific provision for additional funding needed by the BBC in relation to any requirements agreed under sub-paragraphs (a) to (d).
- (4) The BBC is not required to commence any activity agreed under paragraph (3) before the nomination of the digital switchover date by the Secretary of State.
- (5) The BBC must consult Ofcom on any technical and coverage planning requirements resulting from the activities agreed under paragraph (3)(a) and (b).

- (6) For the purposes of this clause-

“digital switchover date” means a date nominated by the Secretary of State under section 97A of the Broadcasting Act 1990.

#### **46. Radio Spectrum**

- (1) The BBC must secure the efficient use of the radio spectrum that is available for use by the BBC or its contractors.

- (2) The Secretary of State may direct the BBC to grant to any public service broadcaster the right to use any capacity on a television multiplex service (within the meaning of Part 1 of the Broadcasting Act 1996) that is under the BBC's control (subject, where applicable, to compliance with any need to obtain a new or revised licence from Ofcom for that purpose), where it appears appropriate to do so-
- (a) in the interests of public service broadcasting in the UK; or
  - (b) in pursuance of any international obligation of the UK.

**47. BBC's general duty to co-operate in achieving 700 Mhz DTT clearance programme**

The BBC must use all reasonable endeavours to co-operate promptly and in good faith with the 700MHz DTT Clearance programme with-

- (a) public service broadcasters and holders of licences to provide television multiplex services within the meaning of Part 1 of the Broadcasting Act 1996;
- (b) any department of UK Government involved in the planning or implementation of the 700MHz DTT Clearance Programme;
- (c) Ofcom; and
- (d) any other person notified to the BBC for the purposes of this clause by the Secretary of State.

**48. Broadband roll-out and use**

- (1) The BBC must pay to the Secretary of State:
- (a) £80 million in the financial year 2017/2018;
  - (b) £20 million in the financial year 2018/2019; and
  - (c) £10 million in the financial year 2019/2020.
- (2) The amounts set out in paragraph (1) must be used by the Secretary of State to enable and encourage the provision and use of broadband infrastructure and of services provided by means of such infrastructure, in a manner that supports the BBC's Mission and Public Purposes.
- (3) Any sum unspent by the Secretary of State in a financial year may be retained and carried forward to the next financial year.
- (4) Where any amount is not used for the purpose in paragraph (2), the Secretary of State must pay to the BBC out of money provided by Parliament a sum equal to the underspent amount except where the Secretary of State and the BBC agree the amount should be used for another purpose.

## **THE FUNDING OF THE BBC**

**49. Licence fee funding and other finance**

- (1) The Secretary of State must pay to the BBC out of money provided by Parliament sums equal to the whole of the net Licence Revenue or such lesser sums as the Secretary of State may, with the consent of the Treasury, determine.

- (2) The BBC may use sums paid to it under paragraph (1) to fund any activities properly carried on by the BBC except—
- (a) those carried on for the purposes of any commercial activity, any services of a description mentioned in paragraph (6), or any service (apart from the World Service) aimed primarily at users outside the UK;
  - (b) any which are carried on for the purposes of a television, radio or online service which is wholly or partly funded by advertisements, subscription, sponsorship, pay-per-view system or any other alternative means of finance, unless the Secretary of State has given prior written approval.
- (3) For the purposes of paragraph (2)(b)—
- (a) whether an activity is carried on for the purposes of a television, radio or online service which is funded in any of the ways described in that paragraph depends on whether the service is a UK Public Service or within the scope of the World Service Licence;
  - (b) the activity of complying with the BBC's duty under section 58(1) of the Broadcasting Act 1990 is not to be regarded as an activity carried on for any of those purposes.
- (4) In paragraph (2)(b), the reference to “any other alternative means of finance” does not include the use of funds derived from—
- (a) the commercial activities;
  - (b) voluntary payments of the licence fee, legacies or other donations;
  - (c) the Open University;
  - (d) any co-production arrangement; that is, an arrangement whereby BBC output is created, commissioned or otherwise obtained by the BBC in co-operation with one or more appropriate third parties, and where funding is provided in exchange for broadcasting, publishing or other rights in the material;
  - (e) any not for profit cultural, arts, sports, educational and science bodies or other similar organisations but only where the funding is compatible with a statement of policy published by the BBC;
  - (f) co-funding by not for profit bodies for output in minority languages and other limited circumstances, but only where compatible with a statement of policy published by the BBC;
  - (g) competition prizes and other awards made available or funded or provided by any one or more third parties but only where compatible with a statement of policy published by the BBC;
  - (h) the BBC recovering the costs of the following events: The Proms, Proms in the Park, Cardiff Singer of the Year, Young Musician of the Year; and other similar events which contribute to the BBC's Mission and Public Purposes, from the proceeds of ticket sales, in line with a statement of policy that is agreed with the Secretary of State;
  - (i) in the following circumstances—
    - (i) the funds are derived from any other arrangement under which any activity, facility or event—
      - a. featured (in whole or part) in BBC output, or
      - b. used (in whole or part) to support the creation of BBC output, is carried on or provided with support from, or in co-operation with, any one or more third parties so as to share the costs of carrying out, providing, using or mounting the activity, facility or event; and
    - (ii) the use of the funds is compatible with a statement of policy published by the BBC.
- (5) Nothing in paragraph (2)(b) is-

- (a) to affect any spending in carrying out the specified activities (see clauses 38 to 48);
  - (b) to prevent the provision of output provided by the organisations mentioned in paragraph (4) in the UK Public Services where that output may have been funded (in whole or in part) by a commercial body;
  - (c) to prevent the BBC receiving reasonable costs from organisations for the provision of output provided by such organisations in the UK Public Services.
- (6) Paragraphs (2) to (5) enable the BBC to work collaboratively and in partnership with other organisations (see article 13 of the Charter). In particular, these provisions allow the BBC to use alternative means of finance together with net Licence Revenue to fulfil the Mission and promote the Public Purposes.
  - (7) Where the BBC performs any services at the request of any department of the UK Government (save for under clause 42 (BBC Monitoring) or clause 67 (defence and emergency arrangements)) the Minister in charge of the department concerned must pay to the BBC such sums as the Treasury may authorise for those purposes.
  - (8) Sums payable to the BBC under paragraph (1) or (7) of this clause must be paid in instalments and at intervals determined by the appropriate Minister and any adjustment between the parties shall be made as soon as conveniently possible.
  - (9) Any account certified by a member of the Senior Civil Service in the Department for Culture, Media and Sport of any sum due to the BBC under paragraph (1) shall for all purposes be final and conclusive in the absence of manifest error.
  - (10) The BBC shall deliver to the Secretary of State or other Minister (as the case may require) accounts of its expenditure of sums paid to it under paragraph (7). Such accounts shall cover such periods and be delivered at such times as the appropriate Minister may direct.
  - (11) Sums paid to the BBC under this clause must be used and administered by the BBC in accordance with any terms and conditions attached by the paying Minister with the consent of the Treasury or by Parliament.
  - (12) In this clause, “net Licence Revenue” means the amounts paid by the BBC into the Consolidated Fund under section 365 of the Communications Act 2003, less the expenses incurred by or on behalf of the Secretary of State in relation to the administration of the television licensing system.
  - (13) In this clause, “sponsorship” and “subscription” are to be interpreted congruently with the definitions of “sponsored material” and “subscription service”, respectively, in clause 50.

## **50. Subscription services and sponsored material**

- (1) The BBC may provide a subscription service, and may develop, test and pilot such a service, with the approval of the appropriate Minister. Any such service does not amount to a charge for the purposes of paragraph 1 of Schedule 3 and may amount to a material change for the purposes of clause 7 (UK Public Services).
- (2) The BBC must not, without the prior approval of the appropriate Minister, include any sponsored material in any of its services.

(3) Paragraph (2) does not apply to arrangements with third parties to use funds as allowed by clause 49(4).

(4) In this clause-

“the appropriate Minister”-

- (a) in the case of any service provided for the purposes of the World Service, or any sponsored material proposed to be included in any such service, means the Foreign Secretary, and
- (b) in any other case, means the Secretary of State;

“material” means a programme or an item of online content;

“relevant costs”, in relation to any material, means the costs of producing that material or making it available to the viewers, listeners or users of any service in which it is included;

“sponsored material” means any material that has some or all of its relevant costs met by a person, other than the BBC or the producer of the material, with a view to promoting their own or another’s name, trade mark, image, activities or products or any other direct or indirect interest; and

“subscription service” means a television, radio or online service provided in the UK Public Services or World Service, by virtue of which the BBC (or any company in which the BBC holds shares, whether they are held directly or through the intermediary of one or more other bodies corporate) receives, from persons to whom the service is supplied, money or other valuable consideration in respect of the supply of the service (or any particular component of it) to them.

## **51. Review of verification processes**

- (1) The BBC must carry out a review of the benefits, costs and feasibility of introducing a process to verify the users of on-demand programme services provided by the BBC. The review must consider whether such a verification process would-
  - (a) facilitate the more effective enforcement of the requirement to hold a TV licence; and
  - (b) facilitate portability of on-demand programme services allowing licence fee payers to access such services when they are temporarily outside the United Kingdom.
- (2) The BBC must provide the findings of the review to the Secretary of State as soon as practicable and in any event no later than 31st December 2020.

## **52. Compensation for free television licences**

- (1) This clause applies in any financial year prior to 1st April 2020 in which the BBC issues to any person a TV licence for which, in accordance with regulations made under section 365(1) of the Communications Act 2003, no fee is payable (referred to in this clause as a “free TV licence”).
- (2) In each such year, the Secretary of State must pay to the BBC out of money provided by Parliament-
  - (a) in the financial year 2017/2018-

- (i) such sum or sums as the Secretary of State, having regard to evidence presented by the BBC, is satisfied is equivalent to the total amount which persons in the United Kingdom to whom the BBC has issued free TV licences would have paid to the BBC in respect of their TV licences but for their entitlement to free TV licences; and
    - (ii) a sum or sums in respect of the administrative costs incurred by the BBC in issuing free TV licences, calculated on such basis as may be agreed between that Secretary of State and the BBC.
  - (b) £468 million in the financial year 2018/2019; and
  - (c) £247 million in the financial year 2019/2020.
- (3) Any account certified by the Secretary of State of any sum due to the BBC under this clause shall for all purposes be final and conclusive in the absence of manifest error.
- (4) Sums paid to the BBC under this clause shall be used and administered by the BBC in accordance with any terms and conditions attached by the Secretary of State with the consent of the Treasury or by Parliament.
- (5) For the purpose of this clause, “Secretary of State” means the Secretary of State for Work and Pensions.

**53. Borrowing, giving security, etc.**

- (1) The Consolidated Net Borrowings of the BBC must not at any time exceed the sum specified in a direction given by the Secretary of State.
- (2) The Consolidated Net Borrowings of the BBC’s commercial arm must not at any time exceed either of the following:
- (a) the sum specified in a direction given by the Secretary of State;
  - (b) three times the commercial arm’s EBITDA in the preceding financial year.
- (3) The BBC must put in place arrangements to ensure compliance with the requirements in paragraphs (1) and (2), which must include-
- (a) arrangements for formal testing of compliance at least annually or on such dates as the Secretary of State may direct; and
  - (b) arrangements for reporting on compliance at the end of the accounting period used for the purposes of articles 37 and 38 of the Charter (annual report and accounts).
- (4) Compliance with the requirements of paragraphs (1) and (2) is to be determined by reference to the BBC’s accounting policies used to prepare the annual audited accounts. Where definitions in the policies differ from those set out in paragraph (12), the definitions in paragraph (12) must be applied.
- (5) The Secretary of State may, by further direction, change the sum for the time being specified for the purposes of paragraph (1) or (2).
- (6) The Secretary of State may also, by direction-

- (a) impose separate requirements (including separate borrowing limits) on the BBC or its commercial arm for capital and current indebtedness, as defined in the direction;
  - (b) alter or add to the requirements on the BBC's commercial arm set out in paragraphs (2) and (3), which includes power to alter or add to definitions that apply to the interpretation of those paragraphs; and
  - (c) impose a requirement on the BBC to comply with a Schedule of Repayments.
- (7) The Secretary of State must consult the BBC before imposing a requirements under paragraph (6)(c).
- (8) No direction under this clause shall affect the validity of any borrowing outstanding at the time it is given (which, in particular, the BBC may therefore continue to repay according to the terms of the borrowing, including any terms of repayments).
- (9) The BBC must make proper provision-
- (a) for repaying its borrowings according to the Schedule of Repayments; and
  - (b) for replacing or renewing any property of the BBC.
- (10) The BBC must not guarantee or underwrite any liabilities of its commercial arm.
- (11) References in this clause to "the BBC" include a reference to any subsidiary of the BBC that is not part of the commercial arm.
- (12) For the purposes of this clause—

"Cash Balances and Short Term Investments" means the aggregate of the following—

- (a) actual cash balances held;
- (b) investments in money market funds and bank deposits;
- (c) certificates of deposit, commercial paper or government securities rated A1/P1 and with a duration to maturity of less than one year.

"Consolidated Net Borrowings" means, without double counting, the aggregate amount of all obligations for or in respect of Indebtedness for Borrowed Money (after accounting for the fair value of any currency hedges covering financial indebtedness) less Cash Balances and Short Term Investments held;

"EBITDA" means, for any accounting period in the relevant annual audited accounts, operating profit before Specific Items after adjusting for the fair value gain or loss on any currency hedge covering financial indebtedness and adding back any amount attributable to amortisation or depreciation;

"Finance Lease" means any lease or hire purchase contract, a liability under which would, in accordance with BBC accounting policies used to prepare the annual audited accounts, be treated as a balance sheet liability (other than a lease or hire purchase contract which would, in accordance with those policies, in force prior to 1 January 2017, have been treated as an operating lease);

“Indebtedness for Borrowed Money” means any indebtedness, excluding intercompany indebtedness and balances for or in respect of—

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) finance leases.

“Specific Items” means items eligible in accordance with BBC accounting policies used to prepare the annual audited accounts and IAS 1 guidance notes (or any subsequent versions of this guidance); and

“Schedule of Repayments” means a document setting out how the BBC must reduce its Consolidated Net Borrowings, over a time period determined by the Secretary of State.

#### **54. Inspection of accounts**

- (1) The BBC must at all reasonable times upon demand—
  - (a) allow any of the persons mentioned in paragraph (2) to examine or inspect any of the accounts of the BBC;
  - (b) furnish any of those persons with all forecasts, estimates, reconciliations, information and documents which may be required, in such format as may be required, with regard to the financial transactions and engagements of the BBC.
- (2) The persons are the Secretary of State, the Comptroller and Auditor General, the Foreign Secretary and any person nominated by any of them to act on their behalf for the purposes of this clause.

#### **55. Value for money examinations**

- (1) The Comptroller and Auditor General may carry out examinations into the economy, efficiency and effectiveness with which the BBC has used its resources in discharging its functions.
- (2) The BBC must, unless the Comptroller and Auditor General agrees otherwise, ensure that each relevant subsidiary enters into or accedes to one multi-party agreement with the Secretary of State to the effect that—
  - (a) the accounts of the subsidiary must be open to the examination or inspection of the Comptroller and Auditor General; and
  - (b) the Comptroller and Auditor General may carry out examinations into the economy, efficiency and effectiveness with which the subsidiary has used its resources in discharging its functions.
- (3) Clause 54 (in relation to the BBC) and the agreement made with the Secretary of State pursuant to paragraph (2) (in relation to the relevant subsidiaries) are agreements requiring the accounts of the BBC and the relevant subsidiaries to be open to the

- inspection of the Comptroller and Auditor General for the purposes of section 6(3)(d) of the National Audit Act 1983 (meaning that the Comptroller and Auditor General may carry out examinations into the economy, efficiency and effectiveness with which the BBC and its relevant subsidiaries have used their resources in discharging their functions in accordance with that Act (“value for money examinations”) and has a right to obtain documents and information from the BBC and the relevant subsidiaries).
- (4) The BBC must provide, and must ensure that the relevant subsidiaries provide, the Comptroller and Auditor General with access at all reasonable times to any of the documents set out in paragraph (5) for the purpose of value for money examinations and with any assistance, information or explanation which the Comptroller and Auditor General requires in relation to any of those documents.
- (5) The documents are-
- (a) those held or controlled by a person who is or has been in receipt of a grant from the BBC or a relevant subsidiary and which relate to the grant paid;
  - (b) those held or controlled by a person who has or had a contractual obligation to supply goods or services to the BBC or a relevant subsidiary either directly or under a subcontract in relation to a main contract with the BBC or a relevant subsidiary, and which relate to the contractual obligation.
- (6) By virtue of section 6(2) of the National Audit Act 1983, nothing in this Framework Agreement or the agreement made pursuant to paragraph (2) shall be construed as entitling the Comptroller and Auditor General to question the merits of the policy objectives of the BBC or a relevant subsidiary in respect of which a value for money examination is carried out.
- (7) For the purposes of section 6(4) of the National Audit Act 1983, the activities of the BBC and the relevant subsidiaries in relation to which the Comptroller and Auditor General is to have functions under this clause and the agreement made pursuant to paragraph (2) do not include the activity of the BBC and the relevant subsidiaries of making editorial or creative judgements concerning the output and services. This means that the Comptroller and Auditor General will not be entitled to question the merits of any editorial or creative judgement made by the BBC or the relevant subsidiaries.
- (8) Where an issue about the meaning of editorial or creative judgement arises it shall be for the Comptroller and Auditor General to determine the meaning having consulted the BBC or a relevant subsidiary. The BBC must agree and maintain a memorandum of understanding with the Comptroller and Auditor General setting out how the Comptroller and Auditor General will interpret the meaning of editorial and creative judgement. The memorandum of understanding must make provision for how matters such as the nature and creative remit of the UK Public Services and World Service, decisions on individual items of output relating to commissioning, scheduling and talent should be treated and how sensitive information would normally be handled. This must cover journalistic and editorial judgements and such commercial information as may be

agreed to be sensitive. The memorandum of understanding must also include procedures for resolving any disagreement.

- (9) The Secretary of State must lay before Parliament any response of the BBC to the Public Accounts Committee in relation to any inquiry by that Committee into value for money examinations.

## COMPLAINTS

### 56. Procedures for handling complaints

- (1) The BBC must set and publish procedures for the handling and resolution of complaints of its and the commercial arm's compliance with its obligations under the Charter, this Framework Agreement and the Operating Framework.
- (2) In particular, the BBC must establish and maintain procedures for the handling and resolution of complaints about the observance of content standards in the UK Public Services and the World Service. The obligation to observe editorial guidelines in paragraph 2 of Schedule 3 is not a specified requirement (see clause 59(c)). This means that the BBC will consider a complaint about the content standards of a UK Public Service against whether the BBC has observed the editorial guidelines set under paragraph 2 of Schedule 3 whereas Ofcom will consider the complaint against whether the BBC has observed the standards set by Ofcom under paragraph 3 of Schedule 3.
- (3) Before setting the procedures, the BBC must consult Ofcom, so far as the procedures relate to relevant complaints, and the public.
- (4) The procedures—
- (a) must provide that a complaint must normally in the first instance be resolved by the BBC;
  - (b) must give information on how complainants can be expected to be treated by complying with at least the following-
    - (i) the public must know about their right to complain and how;
    - (ii) making a complaint must be straightforward and accessible;
    - (iii) complaints must be considered and resolved effectively;
    - (iv) handling of complaints must be timely;
    - (v) a complaint must be handled in a proportionate manner;
  - (c) must give clear guidance explaining—
    - (i) how the complaints system (including references to Ofcom) works;
    - (ii) the remedies and sanctions that the BBC and Ofcom have the power to apply;
    - (iii) where relevant, the availability of other methods of redress in relation to the type of issues raised by the complainant or prospective complainant;
    - (iv) how complainants will be notified of the resolution of the complaint (and informed of Ofcom's function of considering relevant complaints under clause 57) and provided with an explanation appropriate to the nature of the complaint.

- (5) Paragraph (4)(a) does not apply to complaints relating to the Fairness Code (see paragraph 4 of Schedule 3). For such complaints, the BBC may determine a complaint in the first instance but must refer any complaint to Ofcom for consideration and adjudication if the complainant requests.
- (6) The BBC must retain records of its handling of relevant complaints for a period determined by Ofcom having consulted the BBC.
- (7) The BBC must provide reports to Ofcom in relation to relevant complaints it has received in such form and at such intervals as Ofcom may determine.
- (8) The BBC must publish information about the operation and effectiveness of the procedures in relation to relevant complaints in such form and at such intervals as Ofcom may determine.
- (9) For the purposes of this Agreement, “relevant complaint” means a complaint that the BBC has failed to comply with a specified requirement.

#### **57. Consideration of complaints by Ofcom**

- (1) Ofcom must set and publish procedures for the handling and resolution of relevant complaints-
  - (a) referred to them in the following circumstances-
    - (i) if a complainant is not satisfied with the resolution of a complaint by the BBC;
    - (ii) if a complainant considers, following the resolution of a complaint by the BBC, that the imposition by Ofcom of a sanction, where available, against the BBC may be appropriate;
    - (iii) if BBC has failed to resolve a complaint within the time period set in the procedures under clause 56; or
  - (b) where they have intervened under paragraph (2).
- (2) Ofcom may, in exceptional circumstances, intervene at an earlier stage to handle and resolve a relevant complaint which has not been resolved by the BBC.
- (3) Before setting the procedures, Ofcom must consult the BBC and the public.
- (4) The procedures-
  - (b) must give information on how complainants can be expected to be treated by complying with at least the following-
    - (i) the public must know about their right to make a complaint and how;
    - (ii) making a reference must be straightforward and accessible;
    - (iii) references must be considered and resolved effectively;
    - (iv) handling of references must be timely;
    - (v) a complaint must be handled in a proportionate manner;
  - (d) must give clear guidance explaining—
    - (i) how the complaints system works;
    - (ii) the remedies and sanctions Ofcom have the power to apply;

- (iii) where relevant, the availability of other methods of redress in relation to the type of issues raised by the complainant or prospective complainant;
- (iv) how complainants will be notified of the resolution of the complaint and provided with an explanation appropriate to the nature of the complaint.

#### **58. Ofcom investigations**

- (1) Ofcom may carry out such investigations as they consider appropriate to determine compliance with a specified requirement.
- (2) Ofcom must set and publish procedures for the carrying out such investigations.
- (3) Before setting the procedures, Ofcom must consult the BBC and the public.

#### **59. Specified requirements**

The specified requirements (see article 49 of the Charter) are-

- (a) any requirement imposed on the BBC in the Operating Framework including under clauses 6 to 32 (regulatory frameworks for the UK Public Services, non-service activities, commercial activities and trading activities);
- (b) any regulatory condition imposed on the BBC in an operating licence;
- (c) the regulatory obligations in Schedule 3 (except paragraph 2 (editorial guidelines));
- (d) article 47 of the Charter; and
- (e) clauses 56(6) to (8) (complaints).

#### **60. Online material**

- (1) Ofcom must consider and give an opinion, including such recommendations as they consider appropriate, on whether the BBC has observed the relevant editorial guidelines on the content of online material in the UK Public Services.
- (2) Ofcom and the BBC must enter into an arrangement including provision for-
  - (a) the respective roles of the BBC and Ofcom in handling complaints;
  - (b) the circumstances in which Ofcom will consider a complaint;
  - (c) the relevant editorial guidelines that apply to paragraph (1);
  - (d) subject to paragraph (3), the meaning of online material; and
  - (e) setting and publishing procedures for the handling of complaints.
- (3) Online material excludes programmes provided in an on-demand programme service.

### **GENERAL OBLIGATIONS**

#### **61. Making the UK Public Services widely available**

- (1) The BBC must do all that is reasonably practicable to ensure that viewers, listeners and other users (as the case may be) are able to access the UK Public Services that

are intended for them, or elements of their content, in a range of convenient and cost effective ways which are available or might become available in the future. These could include (for example) broadcasting, streaming or making content available on-demand, whether by terrestrial, satellite, cable or broadband networks (fixed or wireless) or via the internet.

- (2) In complying with (1) BBC may-
  - (a) impose reasonable conditions under which it will make its output and services available to third parties (in accordance with the policy in clause 62); or
  - (b) impose a verification process in relation to the ways in which on-demand programme services are accessed.
- (3) Any condition imposed under paragraph (2)(a) must not adversely impact fair and effective competition and be fair, reasonable and non-discriminatory.
- (4) Any change in the means by which the UK Public Services are made available may amount to a material change for the purposes of clause 7 (UK Public Services).
- (5) In the case of services primarily designed for viewers, listeners or other users in particular parts of the UK, in addition to seeking to reach those people the BBC must, where it is cost effective and beneficial to do so, make those services available to viewers, listeners or other users more widely.

## **62. BBC strategy and policy for distribution**

- (1) The BBC must develop and publish a strategy and policy for the distribution of the UK Public Services. The BBC must distribute its output and services according to that strategy and policy.
- (2) The policy under this clause must-
  - (a) set out how the BBC will fulfil its obligations under clause 61 (making UK Public Services widely available);
  - (b) include the reasonable conditions under which the BBC will make its output and services available to third parties, for example in order to secure appropriate prominence, attribution, quality and value for money;
  - (c) ensure the BBC can only limit the distribution of its output and services to third parties via the BBC's own services or platforms where it is satisfied this is reasonable and in the public interest;
  - (d) ensure that it acts on a fair, reasonable and non-discriminatory basis.
- (3) Before publishing the policy, the BBC must consult with-
  - (a) the public; and
  - (b) Ofcom.

## **63. Promotion**

- (1) The BBC must ensure that the promotion of any output of a UK Public Service or any such service in the UK Public Services focuses on output contributing substantially to the fulfilment of the Mission and promotion of the Public Purposes.
- (2) The BBC must publish information on such promotion including-
  - (a) the number of minutes of promotions in each UK Public Service;
  - (b) the time of day of such promotions;
  - (c) such other information it considers would be in the public interest to publish.

#### **64. Scheduling**

The BBC must, in the overall scheduling of programmes in the UK Public Television Services, have regard to-

- (a) the views and interests of the audience; and
- (b) any potential adverse impact on fair and effective competition.

#### **65. Research and development**

- (1) The BBC must ensure that it conducts research and development activities geared to the fulfilment of the Mission and the promotion of the Public Purposes and which aim to maintain the BBC's leading role in research and development in broadcasting and other means for the distribution and consumption of audio, visual and audiovisual material and other content, and in related technologies.
- (2) In carrying out its function under paragraph (1), the BBC must pay particular attention to supporting and engaging actively in national and international forums for the development of "open standards" (that is to say, technologies where opportunities to participate in their creation are made widely available, free of charge or on terms that are fair, reasonable and non-discriminatory).
- (3) These activities should be conducted both within the BBC and, as much as possible, in co-operation with suitable partners, such as university departments and businesses which are active in relevant fields of research and development or the practical application of the fruits of such research and development.
- (4) The BBC must keep its research and development activities under review, and must (in particular) ensure that an appropriate balance is struck between—
  - (a) the potential for generating revenue through commercial exploitation of its intellectual property, and
  - (b) the value that might be delivered to the public and the UK economy by making new developments widely and openly available.
- (5) The BBC must undertake a review of its research and development activity and spend which must include-
  - (a) a cost benefit analysis (which includes an analysis of the value delivered for the public and the creative and wider economy);

- (b) a qualitative assessment of the success achieved as a result of the investment in research and development activity, taking into consideration at least the previous Charter period, and up to the date of the review;
  - (c) consideration of objectives for the future, and potential ways in which the BBC may be able to improve collaboration with others to deliver increased value for the public as a result of this work.
- (6) The BBC must undertake the review, and publish its findings thereafter, as soon as reasonably practicable and in any event not later than 31st December 2020.

**66. Broadcasting and network resilience**

- (1) The BBC must take all reasonable steps to minimise the risk of the loss of, or a significant disruption to, the broadcast and distribution of BBC radio and television services including cyber security risks to BBC operations.
- (2) The BBC must review its approach to broadcast and distribution, network and cyber security resilience on a regular basis.

**67. Defence and Emergency Arrangements**

- (1) Any UK Government Minister—
  - (a) may request that the BBC broadcast or otherwise distribute any announcement; and
  - (b) may, if that Minister has requested that the announcement be broadcast or otherwise distributed on television or by means of an online service, request that the BBC accompany that announcement with a visual image (moving or still) of anything mentioned in the announcement.
- (2) If it appears to any UK Government Minister that an emergency has arisen, that Minister may request that the BBC broadcast or otherwise distribute any announcement or other programme.
- (3) A request under paragraph (1) or (2) must be made in writing, and the BBC-
  - (a) must comply with the request in the timescales specified by the Minister;
  - (b) must meet the cost of doing so itself; and
  - (c) may, when broadcasting or distributing the announcement or other programme, announce that it is doing so pursuant to such a request.
- (4) The Secretary of State may give the BBC a direction in writing that the BBC must not broadcast or otherwise distribute any matter, or class of matter, specified in the direction, whether at a time or times so specified or at any time.
- (5) The BBC may, if it wishes, announce that such a direction has been given, varied or revoked.

**68. Investigation of electromagnetic interference**

The BBC must make reasonable arrangements for the investigation, at the BBC's expense, of complaints of interference by electromagnetic energy affecting domestic television and radio reception within the UK.

**69. Archive**

- (1) The BBC must make arrangements for the maintenance of an archive, or archives, of films, sound recordings, other recorded material and printed material which is representative of the sound and television programmes and films broadcast or otherwise distributed by the BBC.
- (2) Those arrangements—
  - (a) must ensure that every such archive is kept safely, to commonly accepted standards; and
  - (b) must give the public reasonable opportunities to visit the archives and view or listen to material kept there, with or without charge (as the BBC thinks fit).
- (3) In making those arrangements, the BBC must consult such bodies as are engaged in maintaining sound, television and film archives as it considers appropriate which are not established or conducted for profit.
- (4) The BBC must not destroy, sell or otherwise dispose of any material that it has broadcast or otherwise distributed which it decides not to preserve in any archive without first offering that material, free of charge, to such bodies as are engaged in maintaining sound, television and film archives as it considers appropriate.
- (5) Where the BBC's offer is accepted by any body or bodies, the BBC must transfer the material to that body or those bodies.

**70. Film**

The BBC must develop and publish a film strategy that must-

- (a) contribute to the fulfilment of the Mission and the promotion of the Public Purposes; and
- (b) support British film by both investing in film production and promoting, through exhibition and coverage, British film on television and online.

**GENERAL MATTERS**

**71. Approvals and directions**

- (1) Where, under or by virtue of this Agreement, any act or thing is required to be done with the approval of any UK Government Minister—
  - (a) any approval must be given in writing; and
  - (b) any approval may be revoked or varied (in which case sub-paragraph (a) applies as it applied to the giving of the original approval).

- (2) Where, under or by virtue of this Agreement, any UK Government Minister has power to give a direction to the BBC—
- (a) any direction must be given in writing; and
  - (b) the power includes a power to revoke or vary the direction (subject to any conditions or limitations that are applicable to the power concerned).

## **72. Non-Assignment**

The BBC must not, without the prior approval of the Secretary of State, assign or otherwise dispose of any of its rights or obligations under this Agreement.

## **73. Contracts (Rights of Third Parties) Act 1999**

- (1) The parties do not intend any of the terms of this Agreement to be enforceable by a third party under section 1 of the Contracts (Rights of Third Parties) Act 1999.
- (2) This clause is not intended to affect any ability of third parties to take other action which might be open to them in respect of a breach of this Agreement (see, for example, article 56 of the Charter).

## **INTERPRETATION**

## **74. Introduction**

To enable this Agreement to be drafted in language which is not too cumbersome or complex, it relies on various principles or rules of interpretation which are explained below. These need to be borne in mind when reading the Agreement. However, they need to be used with common sense: they do not apply where the context requires otherwise.

## **75. Definitions and interpretation**

In this Agreement:

“analogue form” are such of the BBC’s principal radio services that are, at the date of this Agreement, broadcast by means of AM or FM in analogue form (whether or not they are also broadcast in digital form at that time);

“BBC” means the British Broadcasting Corporation;

“BBC One” means the UK Public Television Service known as BBC One;

“BBC Two” means the UK Public Television Service known as BBC Two;

“the BBC’s commercial arm” means all subsidiaries of the BBC which play a role in the carrying out of the commercial activities (see clause 23);

“broadcast” means broadcast by wireless telegraphy and wireless telegraphy has the same meaning as in the Wireless Telegraphy Act 2006.

“the Charter” means the Royal Charter for the continuance of the BBC for the period ending on 31st December 2027;

“commercial activities” has the meaning given to it in clause 23;

“the Foreign Secretary” means Her Majesty’s Principal Secretary of State for Foreign and Commonwealth Affairs;

“functions” includes both powers and duties;

“group accounts” means the accounts required to be prepared under article 38(1)(c) of the Charter;

“local radio services” means any analogue local radio service that may also be broadcast in digital form and which the BBC provides designated for local audiences in England”;

“Mission” means the mission set out in article 5 of the Charter;

“700MHz DTT clearance programme” means the spectrum clearance programme run by Ofcom to clear TV services from spectrum between 694 and 790 MHz (known as the ‘700MHz band’);

“Ofcom” means the Office of Communications established under the Office of Communications Act 2002;

“Parliament” means the Parliament of the United Kingdom;

“performance measures” means the measures determined by the BBC and Ofcom under articles 20(3)(d) and 46(4) of the Charter.

“principal radio services” means-

- (a) such of the radio services listed in Schedule 1 as the BBC may provide at any given time; and
- (b) any radio service that the BBC provides at that time designed for audiences across the UK (with or without national versions or regional variations) or principally for audiences in a nation of the UK;

“Public Purposes” means the purposes set out in article 6 of the Charter;

“public service broadcaster” means the holder of a licence to provide any Channel 3 service or Channel 5 (as defined in Part 3 of the Communications Act 2003); the Channel 4 Television Corporation; and S4C;

“relevant subsidiary” means an entity that, in accordance with International Financial Reporting Standards, is controlled by the BBC and falls to be included in consolidated group accounts; and includes a subsidiary that is established or otherwise becomes a relevant subsidiary after this Framework Agreement comes into force;

“S4C” means the authority whose name is, by virtue of section 56(1) of the Broadcasting Act 1990, Sianel Pedwar Cymru;

“the Secretary of State” means Her Majesty’s Principal Secretary of State for Culture, Media and Sport;

“the United Kingdom” means the United Kingdom of Great Britain and Northern Ireland;

“the UK” is to be taken to mean, for these purposes only, the United Kingdom, together with the Channel Islands and the Isle of Man;

“the UK Government” means Her Majesty’s Government in the United Kingdom;

“the UK Public Broadcasting Services” means those UK Public Services which consist of television programme services and radio programme services;

“The UK Public On Demand Programme Services” means those UK Public Services the principal purpose of which is the provision of programmes comparable in form and content to programmes normally included in television and radio programme services, and access to which is on demand, and UK Public On Demand Programme Service means any of those services;

“the UK Public Television Services” means those UK Public Services which consist of television programme services, and “UK Public Television Service” means any of those services;

**76. Gender and number**

- (1) Words importing the masculine gender include the feminine, and vice versa.
- (2) Words in the singular include the plural unless the context requires otherwise.

**77. Continuity of powers and duties**

Where this Agreement confers a power or imposes a duty it is implied, unless the contrary intention appears, that the power may be exercised, or the duty is to be performed, from time to time as occasion requires.

**78. Power to make different provision for different cases**

In exercising any function under this Agreement, any person may make different provision for different cases or purposes.

**79. References relate to whatever time is relevant**

- (1) Any references to the holder of any office is to be read as referring to the holder of that office for the time being, that is to say, at the relevant time rather than the date on which this Agreement was made.
- (2) Similarly, references to anything else are to be read as relating to whatever falls within the reference at whatever time is relevant.

**80. Implied power to amend**

Any power conferred on any person under this Framework Agreement to make any document, however expressed, implies the power, exercisable in the same manner

and subject to the same conditions or limitations, to revoke, amend or re-make any document made under the power. For example, the power conferred on Ofcom to set an operating licence under clause 13 includes the power to amend any licence set and in doing so Ofcom must consult the persons in clause 13(5).

**81. References to legislation**

- (1) References to particular legislation should be read as referring to that legislation as amended or re-enacted from time to time.
- (2) In relation to the Isle of Man or the Channel Islands references to any Act are references to that Act as extended to the Isle of Man or the Channel Islands.

**82. Headings**

Headings and parts are for convenience only and are not necessarily a reliable guide to the precise interpretation of the substantive text to which the heading relates. For example, to be useful, headings often have to oversimplify, or to be selective in what aspects of the actual content they flag up.

IN WITNESS of which the Secretary of State has set her hand and caused her seal to be affixed to this deed and the BBC has caused its corporate seal to be affixed to this deed.

## **SCHEDULE 1 - SOME TRANSITIONAL MATTERS**

### **PART 1 - UK PUBLIC SERVICES**

#### **1. List and description of the UK Public Services**

- (1) The BBC must maintain and publish a list of the UK Public Services setting out the name of the service, the type of service and a brief description of the service.
- (2) The list on the date on which this Agreement is made must consist of the services listed in paragraph 2.
- (3) A material change to the UK Public Services (see clause 7) may require the list to be amended.

#### **2. Existing services**

- (1) As television services designed for audiences across the UK—
  - (a) BBC One: a mixed-genre channel, with versions for Scotland, Wales and Northern Ireland and variations for English regions and the Channel Islands , providing a very broad range of programmes to a mainstream audience;
  - (b) BBC Two: a mixed-genre channel, with versions for Scotland, Wales and Northern Ireland, carrying a broad range of programmes for a mainstream audience, but with a particular focus on factual programmes, innovative comedy and drama;
  - (c) BBC Four: a channel providing an intellectually and culturally enriching alternative to mainstream programming on other BBC channels;
  - (d) CBeebies: a channel providing a range of programming to educate and entertain very young children;
  - (e) CBBC: a mixed-schedule channel for pre-teen children;
  - (f) BBC News: a rolling news channel providing news, analysis and other informational programmes;
  - (g) BBC Parliament: a channel providing substantial live coverage of debates and committees of the UK's Parliaments and Assemblies, and other political coverage; and
  - (h) BBC Red Button: interactive digital content including news and other information, both freestanding and in support of the other linear services but also providing an access and navigation point for non-linear BBC content.
- (2) As radio services designed for audiences across the UK-
  - (a) \_\_\_\_Radio 1: principally a popular music service aimed at young audiences, with a commitment to the best new music, but also containing significant speech output;
  - (b) 1Xtra: a service of contemporary black music, with a focus on new and live music, alongside significant speech output for young audiences;
  - (c) Radio 2: a service providing a broad range of popular and specialist music, and speech output including news, current affairs and factual programming;

- (d) Radio 3: a service centred on classical music, alongside other music and art forms and speech output, and with a strong focus on live and specially recorded music;
  - (e) Radio 4: a speech-based service including news, current affairs, factual programmes, drama, readings and comedy;
  - (f) BBC 4 Extra: a speech-based service offering comedy, drama and readings, mainly from the BBC archive;
  - (g) BBC Radio 5 live: 24-hour coverage of news and sport;
  - (h) BBC Radio 5 live sports extra: a part-time extension to BBC Radio 5 live providing additional live coverage of sporting events;
  - (i) BBC 6 Music: a service of popular music outside the current mainstream, together with speech output which provides context for that music; and
  - (j) BBC Asian Network: a service bringing a wide range of news, music and factual programming to audiences of British Asians.
- (3) As television and radio services designed primarily for audiences in particular parts of the UK-
- (a) BBC Radio Scotland: a radio service available throughout Scotland, with a mixed schedule of music and speech output;
  - (b) BBC Radio nan Gaidheal: a radio service of programming in the Gaelic language in Scotland;
  - (c) BBC Radio Wales: a radio service available throughout Wales, with a mixed schedule of music and speech output in the English language;
  - (d) BBC Radio Cymru: a radio service available throughout Wales with programming in the Welsh language;
  - (e) BBC Radio Ulster and BBC Radio Foyle: a radio service with a mixed schedule of music and speech output, in which BBC Radio Ulster is available throughout Northern Ireland except that at certain times BBC Radio Foyle is provided instead to audiences in the western parts of Northern Ireland;
  - (f) BBC Local Radio: a number of local radio services for audiences in different parts of England and the Channel Islands, providing a mixture of music and speech output; and
  - (g) BBC Alba: a mixed-genre television channel for Gaelic speakers and those interested in the Gaelic language and culture, provided by the BBC in partnership with MG Alba.
- (4) As online services designed for users across the UK, BBC Online: a comprehensive online content service, with content serving the whole range of the BBC's Public Purposes and including the BBC's news and sports websites, BBC iPlayer and BBC Three for younger adult audiences.

## **PART 2 - REVOKED AGREEMENTS**

### **3. Revoked agreements**

The following agreements are hereby revoked by this Agreement-

- (a) the Agreement dated 30th June 2006 between the Secretary of State for Culture, Olympics, Media and Sport<sup>2</sup> and the BBC, containing provision relating to the BBC and its services;
- (b) the Amendment dated 23rd March 2010 to the Agreement of 30th June 2006 between the Secretary of State and the BBC;
- (c) the Amendment dated 11th February 2011 to the Agreement of 30th June 2006 between the Secretary of State and the BBC; and
- (d) the Amendment dated 13th September 2011 to the Agreement of 30th June 2006 between the Secretary of State and the BBC.

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<sup>2</sup> The functions and property of the Secretary of State for Culture, Media and Sport were transferred to the Secretary of State for Culture, Olympics, Media and Sport (effectively changing the Secretary of State's official title) by the Secretary of State for Culture, Olympics, Media and Sport Order 2010 (S.I. 2010/1551). The functions were then transferred back by the Transfer of Functions (Secretary of State for Culture, Media and Sport) Order 2012 (S.I. 2012/2590).

## **SCHEDULE 2 - OPERATING LICENCE REGULATORY CONDITIONS**

### **1. Distinctive output and services**

- (1) In imposing the regulatory conditions Ofcom must have particular regard to the need for the BBC to secure the provision of distinctive output and services.
- (2) For the purposes of this Schedule, “distinctive output and services” means output and services, taken as a whole, that are substantially different to other comparable providers across each and every UK Public Service both in peak time and overall, and on television, radio and online, in terms of-
  - (a) the mix of different genres and output;
  - (b) the quality of output;
  - (c) the amount of original output produced in the UK;
  - (d) the level of risk-taking, innovation, challenge and creative ambition; and
  - (e) the range of audiences it serves.

### **2. The first operating licence**

- (1) In imposing the regulatory conditions in the first operating licence, Ofcom must seek to increase the current requirements on the BBC as a whole to secure the provision of more distinctive output and services. In particular, Ofcom must-
  - (a) have a presumption against removing any of the current requirements which would result in the provision of less distinctive output and services;
  - (b) consider the case for increasing the current requirements in areas where the BBC has exceeded those requirements or where this would support the provision of distinctive output and services;
  - (c) consider the case for setting requirements in areas where an improvement in performance would secure the provision of distinctive output and services;
  - (d) consider the need for the BBC to reflect, represent and serve audiences taking into account the needs of the diverse communities of the United Kingdom’s nations and regions.
- (2) In complying with subparagraph (1)(b) and (c) in relation to television services, and in particular BBC One, Ofcom must have particular regard to the desirability of setting or changing requirements-
  - (a) relating to the amount and prominence of genres that provide a particular contribution to the Mission and Public Purposes, are underprovided or in decline across public service broadcasting including:
    - (i) music, arts, religion and other specialist factual content;
    - (ii) comedy; and
    - (iii) children’s programming;
  - (b) to secure an appropriate balance of unique titles and long-running series both in peak viewing time and other times.
- (3) In complying with subparagraph (1)(b) and (c) in relation to radio services, Ofcom must have particular regard to the desirability of setting or changing requirements-

- (a) to improve focus on promoting UK talent, particularly new UK acts, on Radio 1 and Radio 2;
  - (b) to ensure Radio 1 and Radio 2 music output in particular is more distinct from those of other broadcasters, taking into account number of plays not just size of playlist at both peak listening and other times;
  - (c) to increase the amount of news, information, current affairs and social action issues on Radio 1 and Radio 2, particularly at peak listening time;
  - (d) to broaden sports coverage, to better support sports which currently receive less broadcast coverage.
- (4) In complying with paragraph 1(1) in relation to radio services, Ofcom must consider the case for clearer average age targets for the mainstream radio services.
- (5) In complying with subparagraph (1)(b) and (c) in relation to online services, Ofcom must have particular regard to the desirability of setting or changing requirements-
- (a) to improve provision for news and current affairs;
  - (b) to improve provision for children's output and education.

### **3. Third party online material**

Ofcom must impose on the BBC the requirements they consider appropriate for ensuring adequate links to material provided by third parties from BBC Online.

### **4. News and current affairs**

- (1) Ofcom must impose on the BBC the requirements they consider appropriate for securing-
- (a) the programmes included in the UK Public Television Services include news programmes and current affairs programmes at what appears to them to be an appropriate level; and
  - (b) the news programmes so included are broadcast for viewing at intervals throughout the period for which the UK Public Television Services are provided.
- (2) The requirements may include such provision as Ofcom consider appropriate, including as to-
- (a) the services which must include news programmes and/or current affairs programmes;
  - (b) the time which must be allocated to the broadcasting of news programmes and current affairs programmes; and
  - (c) the split between peak viewing times and other times.

### **5. Original productions**

- (1) In relation to each of the UK Public Television Services, Ofcom must impose on the BBC the requirements they consider appropriate for securing-
- (a) the time allocated, in each year, to the broadcasting of original productions included in that service is no less than what appears to them to be an

- appropriate proportion of the total amount of time allocated to the broadcasting of all the programmes included in that service; and
- (b) the time allocated to the broadcasting of original productions is split in what appears to them to be an appropriate manner between peak viewing times and other times.
- (2) The proportion determined by Ofcom for the purposes of subparagraph (1)-
- (a) must, in the case of each service, be such proportion as Ofcom consider appropriate for ensuring the service is consistently of a high quality; and
  - (b) may, for the purposes of subparagraph (1)(b), be expressed as the cumulative effect of two different minimum proportions, one applying to peak viewing times and the other to other times.
- (3) The requirements may provide that specified descriptions of programmes are to be excluded in determining the programmes a proportion of which is to consist of original productions. In determining whether a programme is of a description of programmes so excluded, regard must be had to any guidance (to be included in the Operating Framework) given by Ofcom.
- (4) For the purposes of this paragraph “original productions”, in relation to the UK Public Television Services taken together, has the same meaning that is specified by order under section 278(6) of the Communications Act 2003 in relation to a licensed public service channel, except that-
- (a) to any extent that such an order makes different provision for different cases, Ofcom will determine which of those cases shall be taken to be relevant for the purposes of this paragraph; and
  - (b) to any extent that such an order makes provision in terms which are not apt to apply for the purposes of this paragraph, Ofcom will determine whether, and if so what, necessary modifications are to be made so that such provision may apply, as analogously as practicable, for those purposes.

## **6. Programming for the nations and regions**

- (1) Ofcom must impose on the BBC the requirements they consider appropriate, having regard to the needs of the nations and regions, for securing that-
- (a) what appears to Ofcom to be a sufficient amount of time is given in the programmes included in the UK Public Television Services to what appears to them to be a suitable range of programmes (including regional news programmes) which are of national or regional interest;
  - (b) the regional programmes included in the UK Public Television Services are of high-quality;
  - (c) what appears to Ofcom to be a suitable proportion of the regional programmes included in the UK Public Television Services consists of programmes made in the relevant area;
  - (d) the regional news programmes included in the UK Public Television Services are broadcast for viewing at intervals throughout the period for which the services are provided and, in particular, at peak viewing times;

- (e) what appears to Ofcom to be a suitable proportion of the other regional programmes that are included in the UK Public Television Services consist of programmes broadcast for viewing-
  - (i) at peak viewing times; and
  - (ii) at times immediately preceding or following those times.
  
- (2) The requirements may include such provision as Ofcom consider appropriate, including as to:
  - (a) the services which must include such programmes;
  - (b) the time which must be allocated to the broadcasting of such programmes; and
  - (c) the split between peak viewing times and other times.
  
- (3) Ofcom must not, without first consulting the public and the BBC, impose requirements the effect of which would be to allow any of the following—
  - (a) the hours of regional programmes included, in any year, in the UK Public Television Services;
  - (b) the proportion of regional programmes included, in any year, in the UK Public Television Services which consist of programmes made in the relevant area, to fall, respectively, below the number of hours or, as the case may be, the proportion of programmes, which were included in each such category in the year 2009.
  
- (4) For the purposes of this paragraph, a programme is of national or regional interest if-
  - (a) it is of particular interest to persons living in any one of the following nations or regions-
    - (i) Northern Ireland;
    - (ii) Scotland;
    - (iii) Wales;
    - (iv) any region of England in relation to which there is a regional variation of the television service concerned; and
  - (b) it is included in the variation of the service that relates to that nation or region.
  
- (5) For the purposes of this paragraph-

“regional programme” means a programme included in a service with a view to its being of national or regional interest, and “regional news programmes” is to be interpreted accordingly; and

“the relevant area”, in relation to regional programmes, means the nation or region in relation to which those programmes are to be of national or regional interest.

## **7. Programme making in the nations and regions**

- (1) Ofcom must impose on the BBC the requirements they consider appropriate for securing that-
  - (a) what appears to Ofcom to be a suitable proportion of all the network programmes made in the United Kingdom are programmes made in the United Kingdom outside the M25 area;

- (b) what appears to Ofcom to be a suitable proportion of all the network programmes made in the United Kingdom are programmes made in Scotland, Wales and Northern Ireland;
  - (c) the network programmes that are made in the United Kingdom outside the M25 area (taken together) constitute what appears to Ofcom to be a suitable range of programmes;
  - (d) what appears to Ofcom to be a suitable proportion of the expenditure of the BBC on network programmes made in the United Kingdom is referable to programme production at different production centres outside the M25 area;
  - (e) what appears to Ofcom to be a suitable proportion of the expenditure of the BBC on network programmes made in the United Kingdom is referable to programme production at different production centres in each of (i) Scotland, (ii) Wales, (iii) Northern Ireland and (iv) England (outside the M25 area); and
  - (f) the different programme production centres to which the expenditure referred to in paragraphs (d) and (e) is referable constitute what appears to Ofcom to be a suitable range of such production centres.
- (2) A proportion is not to be regarded by Ofcom as suitable for the purposes of a provision of this paragraph if it constitutes less than a significant proportion of the programmes or expenditure in question.
- (3) For the purposes of this paragraph-

“expenditure”, in relation to a programme, means-

- (a) expenditure which constitutes an investment in or is otherwise attributable to the making of the programme; or
- (b) expenditure on the commissioning or other acquisition of the programme or on the acquisition of a right to include it in a service or to have it broadcast;

“the M25 area” means the area the outer boundary of which is represented by the London Orbital Motorway (M25); and

“network programmes” means programmes made for viewing on any of the UK Public Television Services, other than programmes made for viewing only on a variation of such a service that relates to one of the following- (a) Northern Ireland, (b) Scotland, (c) Wales, (d) any region of England.

## **8. Peak viewing and listening time**

For the purposes of this Schedule, “peak viewing time” and “peak listening time” in relation to a service means a time determined by Ofcom to be, or to be likely to be, a peak viewing time or peak listening time for that service.

### **SCHEDULE 3 - REGULATORY OBLIGATIONS FOR THE UK PUBLIC SERVICES**

#### **1. No charge to be made for reception of the UK Public Services and associated content**

- (1) The BBC must not charge any person, either directly or indirectly, in respect of their reception in the UK, by any means, of-
  - (a) the UK Public Services;
  - (b) any assistance (such as subtitling, signing or audio-description) provided for disabled people in relation to any programme or other item of content included in any such Service;
  - (c) any service relating to the promotion or listing of programmes or any other item of content included in any such Service; or
  - (d) any other service that is ancillary to one or more programmes or items of content so included, and directly related to their contents.
- (2) For the purposes of subparagraph (1), the television licence fee is not to be regarded as a charge for the reception of any UK Public Service.
- (3) Nothing in subparagraph (1) is to be taken to forbid the BBC from recovering from any person the cost to the BBC of providing any service or facility to that person on demand or otherwise at that person's express request.

#### **2. Editorial guidelines**

- (1) The BBC must set, publish, review periodically, and observe guidelines designed to secure appropriate standards in the content of the UK Public Services.
- (2) The guidelines must incorporate the more specific obligations set out in paragraphs 3 and 4 of this Schedule (which are not intended to restrict the general scope of subparagraph (1)).

#### **3. Content standards**

- (1) In providing the UK Public Broadcasting Services, the BBC must observe the standards set under section 319 of the Communications Act 2003 (Ofcom's "Standards Code"). For the purposes of the requirements in the Standards Code which give effect to section 320 of that Act (special impartiality requirements), the UK Public Services which are radio services will be treated as national radio services.
- (2) In providing the UK Public On Demand Programme Services, the BBC must observe the Standards Code so far as Ofcom determine the standards are relevant to the provision of those on-demand programme services.

#### **4. The Fairness Code**

- (1) The BBC must observe the code in force under section 107 of the Broadcasting Act 1996-
  - (a) in connection with the provision of the UK Public Broadcasting Services; and
  - (b) in relation to the programmes included in those services.
- (2) In providing the UK Public On Demand Programme Services, the BBC must observe the same code so far as Ofcom determine the standards are relevant to the provision of those on-demand programme services.
- (3) By virtue of Part 5 of the Broadcasting Act 1996, Ofcom must consider and adjudicate on complaints which are made to them and relate-
  - (a) to unjust or unfair treatment in any programme broadcast by the BBC; or
  - (b) to unwarranted infringement of privacy in, or in connection with the obtaining of material included in, such programmes.
- (4) Ofcom must treat complaints which relate to any programme included in a UK Public On Demand Programme Service in the same manner as programmes broadcast by the BBC.

## **5. Party political broadcasts**

- (1) Ofcom must impose on the BBC the requirements they consider appropriate for requiring-
  - (a) the inclusion, in such of the UK Public Services as Ofcom consider appropriate, of party political broadcasts and of referendum campaign broadcasts; and
  - (b) the BBC to observe such rules with respect to party political broadcasts and referendum campaign broadcasts as may be made by Ofcom.
- (2) The requirements imposed by Ofcom for the purposes of subparagraph (1)(b) may, in particular, include provision for determining-
  - (a) the political parties on whose behalf party political broadcasts may be made;
  - (b) in relation to each political party on whose behalf such broadcasts may be made, the length and frequency of the broadcasts; and
  - (c) in relation to each designated organisation on whose behalf referendum campaign broadcasts are required to be broadcast, the length and frequency of such broadcasts.
- (3) Those requirements are to have effect subject to sections 37 and 127 of the Political Parties, Elections and Referendums Act 2000 (only registered parties and designated organisations to be entitled to party political broadcasts or referendum campaign broadcasts).
- (4) Before imposing any requirements for the purposes of subparagraph 1(b), Ofcom must have regard to any views expressed by the Electoral Commission.
- (5) For the purposes of this paragraph-

“designated organisation”, in relation to a referendum, means a person or body designated by the Electoral Commission under section 108 of the Political Parties, Elections and Referendums Act 2000 in respect of that referendum; and

“referendum campaign broadcast” has the meaning given by section 127 of that Act.

## **6. Programmes to be reserved for independent production**

- (1) By virtue of paragraph 1 of Schedule 12 to the Act (quotas for independent productions) the BBC must secure that, in each year, not less than 25 per cent of the total amount of time allocated to the broadcasting of qualifying programmes included in the television broadcasting services provided by the BBC is allocated to the broadcasting of a range and diversity of independent productions.
- (2) Ofcom may designate television broadcasting services for the purposes of paragraph 1(8) of Schedule 12 to the Act.
- (3) The BBC must ensure, in each year, not less than the Relevant Percentage of the total amount of time allocated to the broadcasting of Qualifying Programmes included in BBC One is allocated to the broadcasting of a range and diversity of independent productions.
- (4) The BBC must ensure that, in each year, not less than the Relevant Percentage of the total amount of time allocated to the broadcasting of qualifying programmes included in BBC Two is allocated to the broadcasting of a range and diversity of independent productions.
- (5) The BBC may carry forward to the next year any shortfall for the year in its compliance with the duties imposed by subparagraphs (3) and (4) and thereby increase the percentage applicable for the purposes of those duties to that year.
- (6) The duties imposed by virtue of subparagraphs (3) and (4) are in addition to any Relevant Statutory Duty, and nothing in subparagraphs (3) and (4) shall be interpreted as making or otherwise providing for any designation under paragraph 1(8) of Schedule 12 to the Act (which enables an Agreement of this type to make certain modifications to a Relevant Statutory Duty).
- (7) For the purposes of this paragraph-

“the Act” means the Communications Act 2003;

“independent productions” has the same meaning as in paragraph 1 of Schedule 12 to the Communications Act 2003;

“Qualifying Programmes”, in relation to BBC One or BBC Two, has the meaning which it has in relation to that service for the purposes of paragraph 1 of Schedule 12 to the Act;

“range”, in relation to independent productions, means a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved;

“Relevant Percentage” means the percentage specified in paragraph 1(1) of Schedule 12 to the Act; and

“Relevant Statutory Duty” means any duty imposed by subparagraph (1) or (4) of paragraph 1 of Schedule 12 to the Act.

## **7. Television, radio and online production**

(1) The BBC must secure competition between BBC producers and external producers (whether independent producers or not) as follows-

(a) in relation to making relevant television programmes-

(i) the BBC must secure competition for at least 40% of the in-house guarantee for drama, comedy, entertainment and factual programmes by 31st December 2018, alongside maintaining the existing level of competition;(ii) the BBC will remove the in-house guarantee for children’s, sport and non-news related current affairs programmes by 31st December 2019; and;

(iii) the BBC must secure competition for 100% of relevant TV programmes by 31st December 2027;

(b) in relation to making relevant radio programmes the BBC must secure competition for at least 60% of Total Relevant Broadcasting Time by 31st December 2022; and

(c) the BBC must secure competition for 100% of relevant online material by 31st December 2027.

(2) In complying with subparagraph (1), the BBC must ensure there is genuine competition between BBC producers and external producers (whether independent producers or not) on a fair, reasonable, non-discriminatory and transparent basis for the right to make relevant television, radio programmes and relevant online material, and must evaluate any such bids on a fair, reasonable and non-discriminatory and transparent basis.

(3) For the purposes of this paragraph-

“BBC producer” means any in-house producer of the BBC and any commercial subsidiary of the BBC established to carry out the activity of making television programmes;

“EBU material” means material supplied by the European Broadcasting Union;

“external producer” means any producer which is not a BBC producer;

“independent production” has the meaning which it has for the purposes of paragraph 1 of Schedule 12 to the Communications Act 2003 and “independent producer” shall be interpreted accordingly;

“in-house guarantee” means the guaranteed allocation of air time to programmes made by the BBC under clause 56 of the 2006 Agreement;

“network radio” means Radio 1, 1Xtra, Radio 2, Radio 3, Radio 4, BBC 4 Extra, BBC Radio 5, BBC 6 Music and BBC Asian Network;

“relevant online material” all online material included in the UK Public Services except-

- (a) programmes included in the UK Public On Demand Programme Services;
- (b) news and news-related current affairs material;
- (c) any material where the BBC considers that complying with the obligation in paragraph (1) would not secure value for money;

“relevant radio programmes” means all network radio programmes included in the UK Public Services except-

- (a) news programmes; and
- (b) repeats, continuity, simulcasts, EBU material and autplayed music.

“relevant television programmes” means all television programmes included in the UK Public Services except-

- (a) programmes reserved for independent productions;
- (b) news and news-related current affairs programmes;
- (c) any programme where the BBC considers that complying with the obligation in paragraph (1) would not secure value for money;

“Total Relevant Broadcast Time” means the total amount of time allocated to the broadcasting of relevant radio programmes on the UK Public Broadcasting Services taken together; and

## **8. Code relating to programme commissioning**

- (1) The BBC must draw up and from time to time revise a code of practice setting out the principles that are to be applied when the BBC is, for a purpose connected with the provision of the UK Public Television Services, commissioning independent productions.
- (2) The BBC must—
  - (a) at all times comply with the code of practice which is for the time being in force under this clause;
  - (b) revise that code to take account of revisions of the guidance issued by Ofcom for the purposes of this paragraph
- (3) The code must be such as to secure, in the manner described in guidance issued by Ofcom—

- (a) that a reasonable timetable is applied to negotiations for the commissioning of an independent production and for the conclusion of a binding agreement;
  - (b) that there is sufficient clarity when an independent production is commissioned about the different categories of rights to broadcast or otherwise to make use of or exploit the commissioned production that are being disposed of;
  - (c) that there is sufficient transparency about the amounts to be paid in respect of each category of rights;
  - (d) that satisfactory arrangements are made about the duration and exclusivity of those rights;
  - (e) that procedures exist for reviewing the arrangements adopted in accordance with the code and for demonstrating compliance with it;
  - (f) that those procedures include requirements for the monitoring of the application of the code and for the making of reports to Ofcom;
  - (g) that provision is made for resolving disputes arising in respect of the provisions of the code (by independent arbitration or otherwise) in a manner that appears to Ofcom to be appropriate.
- (4) A draft of the code must be submitted to Ofcom for approval. The code shall have effect only if approved by Ofcom and, if approved, subject to such modifications as they consider appropriate.
- (5) The BBC must also secure that the drawing up a code by virtue of this paragraph is in accordance with guidance issued by Ofcom as to—
- (a) the times when the code is to be drawn up with a view to revision;
  - (b) the consultation to be undertaken before a code is drawn up;
  - (c) the publication of every code.
- (6) Ofcom—
- (a) must issue guidance for the purposes of this paragraph;
  - (b) must ensure that there is always guidance for those purposes in force;
  - (c) must, before issuing their guidance, consult the providers of licensed public service channels, persons who make independent productions (or persons appearing to Ofcom to represent them), the BBC and S4C; and
  - (d) must publish their guidance in such manner as they think appropriate.
- (7) Guidance issued by Ofcom for the purposes of this paragraph must be general guidance and must not specify particular terms to be included in agreements to which the guidance relates.
- (8) For the purposes of this paragraph—

“independent productions” has the meaning which it has for the purposes of paragraph 1 of Schedule 12 to the Communications Act 2003; and

“licensed public service channel” has the meaning which it has for the purposes of Part 3 of that Act.

## **9. Code relating to provision for the hearing and visually impaired**

- (1) The BBC must, in providing the UK Public Services, observe a code drawn up by Ofcom, giving guidance as to-
  - (a) the extent to which the UK Public Services should promote the understanding and enjoyment by-
    - (i) persons who are hearing impaired;
    - (ii) persons who are visually impaired; and
    - (iii) persons with a dual sensory impairment, of the programmes to be included in such services; and
  - (b) the means by which such understanding and enjoyment should be promoted.
- (2) The code must include provision for securing that the BBC ensures that adequate information about the assistance for disabled people that is provided in relation to the UK Public Services is made available to those who are likely to want to make use of it.
- (3) Before drawing up the code, Ofcom must consult-
  - (a) such persons appearing to them to represent the interests of persons falling within subparagraph (1)(a)(i), (ii) or (iii) of that section as Ofcom think fit; and
  - (b) the BBC.
- (4) Ofcom must publish the code in such manner, having regard to the need to make the code accessible to--
  - (a) persons who are hearing impaired;
  - (b) persons who are visually impaired, and
  - (c) persons with a dual sensory impairment, they consider appropriate.

## **10. Retention and production of recordings**

- (1) The BBC must—
  - (a) in respect of every programme included in any of the UK Public Services retain a recording of the programme in a form, and for a period determined by Ofcom;
  - (b) comply with any request to produce such recordings to Ofcom for examination or reproduction; and
  - (c) comply, to the extent that it is able to do so, with any request to produce to Ofcom a script or transcript of a programme included in any of the UK Public Services.
- (2) Before determining periods for the purpose of this clause, Ofcom must consult the BBC and any other person Ofcom consider appropriate.

## **11. International obligations**

- (1) The BBC must comply with requirements notified to it from time to time by Ofcom under this paragraph.
- (2) The requirements to be notified by Ofcom under this paragraph are those which Ofcom consider appropriate for the purpose of securing that the relevant international

obligations of the United Kingdom are complied with in respect of the UK Public Services.

- (3) For that purpose, an international obligation of the United Kingdom is relevant if it has been notified to Ofcom by the Secretary of State for the purposes of this paragraph.
- (4) Before notifying any requirement to the BBC under this paragraph, Ofcom must give the BBC a reasonable opportunity of making representations to them about that requirement.

## **12. Equal opportunities**

- (1) The BBC must make arrangements for promoting, in relation to the persons mentioned in subparagraph (2), equality of opportunity between those who share a relevant protected characteristic and those who do not share it.
- (2) The persons referred to in subparagraph (1) are persons employed in connection with providing any of the UK Public Services or making programmes or other material for inclusion in any of those Services.
- (3) The Secretary of State may, by a direction to the BBC, amend this paragraph by adding any other form of equality of opportunity that the Secretary of State considers appropriate.
- (4) In this paragraph, “relevant protected characteristic” means disability, race or sex as defined in the Equality Act 2010.

## **13. Training**

- (1) The BBC must make arrangements for the training and retraining of BBC staff engaged in connection with providing any of the UK Public Services or making programmes for inclusion in any of those services.
- (2) The training and retraining provided under the arrangements must make an effective contribution to—
  - (a) the fulfilment of the Mission and the promotion of the BBC’s Public Purposes;
  - (b) the preparation and maintenance of a highly-skilled media workforce across the audio-visual industry; and
  - (c) competitiveness and productivity in that industry.
- (3) The BBC must use its best endeavours to work in partnership with others in the audiovisual industry in the planning and provision of training and retraining across that industry.

## **14. General provisions about arrangements under paragraphs 12 and 13**

The BBC must—

- (a) take appropriate steps to make those affected by arrangements made under

- paragraphs 12 and 13 aware of them;
- (b) review those arrangements; and
- (c) (at least once each year) publish a report on the current operation and effectiveness of the arrangements.

## **SCHEDULE 4: TRANSITIONAL PROVISIONS**

### **1. Introduction**

(1) No provision of this Agreement has effect before the beginning of the Effective Date unless this Schedule, this Agreement or the Charter gives it effect (to any extent or for any purpose) during the Transitional Period.

(2) The Effective Date is that provided for in the Schedule to the Charter.

(3) The definitions in the Schedule to the Charter apply to this Schedule.

### **2. General provision about governance arrangements during the Transitional Period**

(1) During the Transitional Period —

(a) the Trust and the Executive Board shall continue to have all the functions contained in the 2006 Agreement, subject to any provision to the contrary contained in this Schedule or the Schedule to the Charter;

(b) the Board shall have only the functions contained in, or provided for in, this Agreement or the Schedule to the Charter;

(c) the members of the Trust and the Executive Board, not the members of the Board, shall be the members of the Corporation; and

(d) Ofcom shall continue to have all the functions contained in the 2006 Agreement and 2006 Charter, and any additional or amended functions contained in this Schedule or the Schedule to the Charter.

(2) The Trust and the Executive Board, respectively, when considering the exercise in relation to any matter of any of their respective functions during the Transitional Period, must give due consideration to the question of whether it should refrain from doing so on the grounds that it would be more appropriate for the Board to deal with the matter in question on or after the Effective Date.

(3) Nevertheless, anything duly done by the Board during the Transitional Period under or by virtue of this Schedule and the Schedule to the Charter shall be taken to be done for and on behalf of the Corporation.

### **3. General power to make preparations during the Transitional Period**

(1) During the Transitional Period, the Board (when comprising at least the Chair) and Ofcom may each do anything (including the exercise of its functions) that appears necessary or expedient to do in order to be prepared to exercise any of its functions under this Agreement or the Charter when the Transitional Period ends. In particular, the BBC may undertake preparations to establish a framework for handling complaints (see clause 56) and an arrangement in respect of online material (see clause 60).

- (2) Sub-paragraph (1) does not apply where any provision of this Agreement shows (expressly or impliedly) that the contrary is intended.

#### **4. Financial obligations**

- (1) Any financial obligations that the Secretary of State or the BBC have under the 2006 Charter or 2006 Agreement continue until the end of the financial year 2016/2017 (31 March 2017). The Secretary of State may use up to £60,000,000 for Broadband roll-out already paid to the Secretary of State by the BBC for a contestable fund.
- (2) Any financial obligations the Secretary of State or the BBC have under this Agreement or Charter apply from the start of the financial year 2017/2018 (1 April 2017).

#### **5. General savings**

- (1) Except where the contrary intention is provided for in this Schedule or the Schedule to the Charter, where any matter is on-going and not resolved by the Effective Date, the provisions in this Agreement and Charter will apply.
- (2) Except where this Schedule or the Schedule to the Charter provides otherwise, any existing BBC policies, regulations, procedures and service licences continue to have effect until replaced by the Board on or after the Effective Date.
- (3) Ofcom's Code on Television Access Services provided for under clause 59 of the 2006 Agreement continues to apply to the BBC under clause 59 of the 2006 Agreement until Ofcom issues a new code.
- (4) Ofcom's guidance for the purpose of the BBC's code relating to programme commissioning provided for in clause 61 of the 2006 Agreement continues to apply until it is replaced by Ofcom.
- (5) The BBC is required to continue to comply with any international obligation notified to the BBC under clause 63 of the 2006 Agreement.