

Cabinet Secretary for Culture, Europe and External Affairs
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In 2014 Scotland Welcomes the World



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15 June 2015

Dear Mr Whittingdale,

MEMORANDUM OF UNDERSTANDING BETWEEN SCOTTISH PARLIAMENT, SCOTTISH GOVERNMENT, BBC AND UK GOVERNMENT

Thank you for your letter on 10 June in which you set out your response to my letters to the Committees of the Scottish Parliament, which are considering the draft Memorandum of Understanding (MoU) between Scottish Government, Scottish Parliament BBC and UK Government. I welcome your commitment to working with me to deliver the ambition and spirit of the Smith Commission to agree a draft that makes certain that Scotland has a strong voice through the process of reviewing the BBC Charter and which ensures that the BBC delivers well for the people of Scotland.

I have attached to this letter, at **Annex A**, the current draft of the Memorandum of Understanding which has been reached between officials. I welcome the amendments to section one to include the commitment that the Scottish Government will be consulted through the process of Charter renewal and feel that this delivers the intent laid out in Paragraph 36 of the Smith Commission report.

I also welcome the proposed changes with regard to the concerns raised by the Public Audit Committee of the Scottish Parliament at section 2. I am confident that through the process of Charter renewal itself we will be able to address their concerns regarding the provision of Scottish specific information.

I hope you agree with me that this version of the MoU, as presented by our officials, marks a positive step forward in delivering a positive outcome. If we are able to agree to this version within the next few days, then we can allow for the Devolution and Further Powers Committee of the Scottish Parliament to consider the draft on the 18 June, with a view to consideration by the full chamber in the following week. Timing of Parliamentary consideration is of course subject to other business in the chamber, but I have asked my officials to work with Parliament to progress considerations before recess begins on the 26 June.

Kind regards
Fiona Hyslop

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Draft Memorandum of Understanding with proposed changes

1. SMITH COMMISSION - MEMORANDUM OF UNDERSTANDING - BBC - DRAFT OUTLINE

Preamble

Following the referendum on the independence of Scotland on 18 September 2014, and in order to deliver the commitments made by the leaders of the pro-UK parties, Lord Smith of Kelvin was asked to convene cross-party talks and facilitate an inclusive engagement process across Scotland to produce recommendations for further devolution of powers to the Scottish Parliament.

That process led to the Smith Commission Agreement, published on 27 November 2014¹. This made several proposals specific to the British Broadcasting Corporation (BBC), as set out in paragraph 36 of the Agreement:

There will be a formal consultative role for the Scottish Government and the Scottish Parliament in the process of reviewing the BBC's Charter. The BBC will lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament in relation to matters relating to Scotland in the same way as it does in the UK Parliament.

The UK Government's Command paper, 'Scotland in the United Kingdom: An enduring settlement'², published in January 2015, set out at paragraphs 5.2.1 – 5.2.3 how paragraph 36 of the Smith Commission Agreement will be enacted by this Memorandum of Understanding (MoU), stating;

5.2.1 Paragraph 36 of the Smith Commission Agreement, which relates to the relationship between the British Broadcasting Corporation (BBC) and the Scottish Government and Scottish Parliament, will be enacted by Memorandum of Understanding (MoU). This MoU, entered into by the UK Government, Scottish Government, Scottish Parliament and the BBC, will fulfil the Agreement's proposal by setting out commitments that guarantee a full consultative role for the Scottish Government and Scottish Parliament in the review of the Royal Charter and the on-going scrutiny of the BBC.

5.2.2 The commitments outlined in the MoU will be:

- A commitment on the UK Government to consult with the Scottish Government and Scottish Parliament before recommending that any Royal Charter on the BBC is granted, and detail concerning the terms of engagement throughout the review process;*
- A commitment from the BBC to send its annual report and accounts to the Scottish Government and a commitment from the Scottish Government to lay these before the Scottish Parliament;*
- A commitment from the BBC to appear before Scottish Parliament committees on matters relating to Scotland; and*
- A commitment to enshrine all the above in the next Charter.*

5.2.3 Setting this out in an MoU, rather than draft clauses, ensures that the BBC's integrity and independence is secured by keeping its governance and constitutional arrangements off the statute books. Importantly, delivering this commitment by MoU will ensure that the Scottish Government and Scottish Parliament are able to have a consultative role in time for the next Charter Review, which is due to commence after the

¹ <https://www.smith-commission.scot/smith-commission-report/>

² <https://www.gov.uk/government/publications/scotland-in-the-united-kingdom-an-enduring-settlement>

2015 General Election; any draft clauses in this respect, setting out a formal role for the Scottish Government, would necessarily come into force too late to guarantee such an involvement. Furthermore, the process, timing and scope of the review of the BBC's Charter are not set out in statute.

Parties

- The Department for Culture, Media and Sport (The Department)
- The BBC³
- The Scottish Government
- The Scottish Parliament

Commitments:

1. Charter Review

The BBC is established by Royal Charter. The Charter sets out how the BBC is constituted, its public purposes, and the respective roles and composition of the BBC Trust and the Executive Board. The current Royal Charter expires at the end of 31 December 2016.

The terms of the formal consultative role for the Scottish Government and the Scottish Parliament in the process of reviewing the BBC's Charter shall be as follows:

- The Department will consult the Scottish Government on the draft terms of reference for the Charter Review in advance of their publication.
- The Scottish Government will lay the final terms of reference for the Charter Review before the Scottish Parliament.
- The Department will consult the Scottish Government through the process of reviewing the charter
- The Scottish Government will lay the draft Charter and Framework Agreement before the Scottish Parliament, and should the Parliament deem it appropriate, schedule a 'take note' debate on the content of the draft Charter and Framework Agreement⁴
- The Department will consult the Scottish Government before recommending to Her Majesty in Council that the draft Charter is granted.

2. Annual report and accounts

Under Article 45 of the Royal Charter, the BBC is required to prepare an annual report and the audited statement of accounts that complies with the requirements of that article and with any directions given (after consulting the BBC) by the Secretary of State or the Foreign Secretary as to the information to be given in the report about the finance, administration and work of the BBC, and in the statement of accounts. The completed report and audited accounts must be sent to the Secretary of State who must lay them before the UK Parliament; and once that has been done the BBC must publish them.

The BBC will send the completed report and the audited accounts to the Scottish Parliament at the same time they are sent to the Secretary of State. The BBC will lay the completed report and the audited accounts before the Scottish Parliament on the next day on which the office of the clerk is open after they have been sent to the Secretary of State.

3. Reports to, and appearing before, the Scottish Parliament

The BBC regularly receives invitations to provide evidence to Committees of the UK Parliament and to those of the Scottish Parliament (both through witnesses and by the production of documentary evidence). The BBC approaches such invitations from

³ In this Memorandum of Understanding - "the BBC" means the British Broadcasting Corporation; "the Executive" means the Executive Board of the BBC; and "the Trust" means the BBC Trust; and any reference to "the BBC" (without qualification) includes a reference to both the Trust and the Executive, so far as makes sense in the context.

⁴ This would ensure parity with the processes in the UK Parliament for the last Charter Review in 2006. See the 'take note' debate in the House of Lords, 30 June 2006: <http://www.publications.parliament.uk/pa/ld200506/ldhansrd/vo060616/text/60616-01.htm>; and the Commons debate on 3 July (see: <http://www.parliament.the-stationery-office.co.uk/pa/cm/cmvote/60710v01.htm>).

committees of the UK Parliament with due regard to its duty to maintain the BBC's editorial and operational independence.

The BBC will submit reports to, and appear before, committees of the Scottish Parliament in relation to matters relating to Scotland on the same basis as it does in the UK Parliament.

4. Next Charter

Subject to a Royal Charter for the continuation of the BBC being granted, the process outlined under section 2 above, relating to the BBC contained in the Smith Commission's proposals will be enshrined in that Charter and in all subsequent charters unless otherwise set in statute elsewhere.