



*On 15 September 2016 the government published a draft Royal Charter and Framework Agreement. This is one in a series of information sheets, explaining some of the key policies contained in the drafts, in more detail.*

### **Background**

The governance and regulation of the BBC are both currently undertaken by the BBC Trust.

An independent review into the governance and regulation of the BBC was conducted by Sir David Clementi (March 2016); the recommendations were accepted by the government

### **The government's policy**

- A unitary board will be established that is fully responsible for the governance of the BBC and the delivery of its services, and Ofcom will become the independent external regulator of the BBC, as recommended by the Clementi Review.
- The BBC's market impacts will be assessed more widely and effectively by Ofcom, who will have powers to investigate any aspect of BBC services.

**Powers to regulate** - the Charter and Framework Agreement will give Ofcom the powers to regulate the BBC.

**Operating licence** - Ofcom will set an operating licence regime for the BBC's UK public services, which will contain its regulatory obligations, including setting measures by which the BBC's performance, in meeting its mission and public purposes, can be measured and assessed.

**Operating framework** - Ofcom will produce and publish a framework setting out how they will regulate the BBC, establishing clear processes and procedures that the BBC, the public, and industry can understand and with which they can engage.

**Service changes** - if the BBC proposes the introduction of new service, or a significant change to existing services, it must be satisfied this is in line with its Mission and Public Purposes, and be done with consideration of audiences and the effect on the market and competition. Ofcom will then have final determination of whether this has been done and that any impact on the market is justified by the public value of the change.

**Reports and reviews** - Ofcom must report annually on how it has discharged its duties; it must also carry out at least two further reviews during the Charter period, covering how well the BBC has fulfilled its mission and purposes, and any other issues it thinks appropriate - the first of which should be

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*For more information, please visit [www.gov.uk/government/collections/bbc-charter-review](http://www.gov.uk/government/collections/bbc-charter-review).  
If you would like to discuss the contents of this information sheet, please contact [enquiries@culture.gov.uk](mailto:enquiries@culture.gov.uk)*

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undertaken in time for it to inform the mid-term review; and it may also undertake additional reviews into issues it sees as requiring further investigation, as appropriate.

**Complaints** - a single complaints system for editorial matters will be introduced. In the first instance the BBC will handle the complaint, but a complainant will be able to appeal a decision to Ofcom; Ofcom will be able to consider complaints about all BBC content.

## **The provisions in the Charter and Agreement**

### Charter

**Article 44** - gives to Ofcom, via s198 of the Comms Act, the function of regulating the BBC

**Article 45** - sets out that Ofcom's duties under s3 of the Comms Act, which it uses to regulate others, apply to the BBC; in regulating the BBC, Ofcom should have regard to the BBC fulfilling its mission and purposes, and its own duty of protecting fair and effective competition

**Article 46** - sets out the functions of Ofcom, to set and publish an operating framework for the regulation of the BBC, and an operating licence for the UK Public Services (UKPS; those funded by the licence fee), setting out regulatory conditions and obligations

**46(5)** - requires Ofcom to set requirements for the protection of fair and effective on competition in relation to the existence of BBC services, changes to them, and agreements with third parties.

**46(6)** - requires Ofcom to set requirements re the interaction between the BBC and its commercial activities, to ensure there is no distortion of the market, or unfair advantage gained

**46(7)** - requires Ofcom to ensure editorial standards are appropriately applied

**Article 47** - gives Ofcom the power to require any information from the BBC that it deems necessary to fulfil its role

**Article 48** - gives Ofcom the power to conduct research, provide information to any person it sees fit, and publish information it thinks necessary, in order to fulfil its role

**Article 50** - requires Ofcom to publish an annual report on how it has discharged its duties as regulator, and assessment of compliance with requirements

**Article 51** - requires Ofcom to carry out two or more reviews re how the BBC is fulfilling its mission and purposes, the first of which must be done in time to inform the mid-term review; Ofcom can undertake additional reviews if they see a specific issue as requiring such further investigation

### Agreement

**Clause 5** - sets out what Ofcom's operating framework must include in terms of general guidance on procedures, tests, and other regulatory obligations

**Clauses 6 to 15** - set out the regulatory regime re the UKPS (which are specified under **Schedule 1**) the process for how services or changes to services to be approved by Ofcom, detail of how public interest tests should be undertaken (8), how Ofcom will determine if a new service or significant change to service is approved (9 and 11), how Ofcom will undertake competition assessments and competition reviews (10 and 12).

**Clause 13** - sets out what the operating licence must contain, and clause 14 how the BBC's performance will be measured (In line with schedule 2, operating licences must have regard to distinctiveness requirements)

**Clauses 16 to 22** - set out the regulatory regime re non-service activities, including defining non-service activities (these are not UKPS but which directly or indirectly fulfil the Mission and Purposes), and rules around making changes to these services (18), how public interest tests must be undertaken (17) and provisions for Ofcom to undertake a competition review (21).

**Clauses 23 to 30** - set out the regulatory regime re the BBC's commercial activities, including how commercial activities are defined, and rules on the introduction of new activities or changes to existing activities (25), the commercial test (24), how Ofcom will determine whether the BBC can make proposed

changes to services (27), how the fair trading assessment will work (26), and how Ofcom and the BBC's reviews of commercial activities will be undertaken (29, 30)

**Clauses 31 and 32** - set out the regulatory regime re the BBC's trading activities, including defining those activities.

**Clauses 56-60** - set out the rules relating to the new complaints procedure (whereby the BBC deals with a complaint first, with appeals to ofcom available), and provides for Ofcom to carry out investigations to ensure compliance with the new regime as they see fit.

**Schedule 2** of the Agreement - sets out the conditions to be included in the operating licence, in relation to distinctive content, news and current affairs, original productions, consideration of programming for the nations and regions of the UK, independent production levels.

**Schedule 3** - sets out some more detail of the regulatory obligations on the UKPS, which includes not charging for this service (1), editorial guidelines (2), the characteristics of the content and the standards it is held to (3), independent production (6), international obligations (11), equal opportunities (12), and training (13)