



DEPARTMENT FOR CULTURE, MEDIA AND SPORT

BROADCASTING

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

*Presented to Parliament by the
Secretary of State for Culture, Media and Sport
by Command of Her Majesty
July 2006*



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Treasury Minute

My Lords have before them a copy of the final draft (for signing and sealing) of a new Agreement (“the New Agreement”) to be concluded by Her Majesty’s Secretary of State for Culture, Media and Sport (“the Secretary of State”) with the British Broadcasting Corporation (“the BBC”).

The New Agreement is intended to complement a new Royal Charter of Incorporation (“the New Charter”), for the grant of which to the BBC the Secretary of State is applying to Her Majesty.

The New Charter will, if granted, expire on 31st December 2016. The New Charter and the New Agreement will, if granted and concluded, respectively supersede the existing Charter granted on 1st May 1996 and the existing Agreement concluded on 25th January 1996 (and amended in 2000 and 2003).

Given that the New Charter will, if granted, provide that:

- The BBC exists to serve the public interest and its main object is the promotion of its public purposes;
- Its public purposes are: sustaining citizenship and civil society; promoting education and learning; stimulating creativity and cultural excellence; representing the UK, its nations, regions and communities; bringing the UK to the world and the world to the UK; and, in pursuing its other purposes, helping to deliver to the public the benefit of emerging communications technologies and services, and taking a leading role in the switchover to digital television;
- The Trust is the guardian of the licence fee revenue and the public interest;
- The Trust and the Executive Board are to act separately and the Trust must maintain its independence of the Executive Board;
- The Trust has, inter alia, the function of assessing the performance of the Executive Board in delivering the BBC’s services and activities and holding the Executive Board to account for its performance;
- The Trust must represent the interests of licence fee payers and exercise rigorous stewardship of public money;
- The Trust must ensure that arrangements for the collection of the licence fee are efficient, appropriate and proportionate;
- The Trust must have regard to the competitive impact of the BBC’s activities on the wider market and adopt a statement of policy on fair trading policy and hold the Executive Board to account for compliance with it;
- The Executive Board must conduct the BBC’s operational financial affairs in a manner best designed to ensure value for money;

And given that the New Agreement will, if concluded, provide that:

- The content of the BBC's UK Public Services must be high quality, challenging, original, innovative and engaging, with every programme or item of content exhibiting at least one of those characteristics;
- The Trust must keep under review the financial needs of the BBC for the purpose of ensuring that the Executive Board are not authorised to spend more public money than is needed for the appropriate discharge of the Board's functions;
- The Trust must examine the value for money achieved by the BBC in using the sums paid to it;
- The Trust must regularly discuss with the Comptroller and Auditor General the possible scope of its audit programme and which individual reviews within that programme would be particularly suited to the National Audit Office;
- Before a decision is taken to make any significant change to the BBC's UK Public Services there must be application of the Public Value Test;
- Whenever the Public Value Test is applied, Ofcom has responsibility for providing the market impact assessment;
- It is the duty of the Trust to secure the efficient use of the radio spectrum that is available for use by the BBC or its contractors;
- The BBC must provide the World Service which involves the broadcast or other distribution of programmes, and the delivery of other services, aimed primarily at users outside the UK;
- For the purposes of the World Service, the Foreign Secretary shall, in each year, pay to the BBC out of money provided by Parliament such sum as the Treasury may authorise;
- The Secretary of State shall pay to the BBC 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;

My Lords consider the terms of the New Agreement and the financial provisions made therein to be satisfactory and on those grounds have authorised the Secretary of State for Culture, Media and Sport to conclude it.

28th June 2006

Frank Roy
Alan Campbell
Two of the Lords Commissioners
of Her Majesty's Treasury.

CONTENTS

- FORMAL PARTS** 1
- INTRODUCTION** 2
 - 1. Interpreting this Agreement 2
 - 2. Status of this Agreement as a ‘Framework Agreement’ for BBC Charter Purposes 2
 - 3. Commencement of this Agreement (and revocation of previous Agreement) 2
 - 4. The independence of the BBC 2
- THE BBC’S PUBLIC PURPOSES** 2
 - 5. Purpose remits 2
 - 6. Sustaining citizenship and civil society 3
 - 7. Promoting education and learning 3
 - 8. Stimulating creativity and cultural excellence 3
 - 9. Representing the UK, its nations, regions and communities 4
 - 10. Bringing the UK to the world and the world to the UK 4
- THE BBC’S UK PUBLIC SERVICES** 4
 - 11. List and description of the UK Public Services 4
 - 12. Making the UK Public Services widely available 6
 - 13. No charge to be made for reception of the UK Public Services and associated content 7
 - 14. UK Public Service content characteristics 7
 - 15. The purposes of public service television in the UK 7
- UK PUBLIC SERVICE LICENCES** 7
 - 16. Service licences for UK Public Services 7
 - 17. The content of service licences 7
 - 18. The activities which need a service licence 8
 - 19. Public consultation on service licences 8
 - 20. Reviews of service licences 8
- STATEMENTS OF PROGRAMME POLICY** 9
 - 21. Statements of programme policy 9
- NON-SERVICE ACTIVITIES** 10
 - 22. Non-service activities 10
- CHANGES TO THE BBC’S UK PUBLIC SERVICES** 11
 - 23. Introduction 11
 - 24. The Public Value Test 11
 - 25. When the Public Value Test must be applied 11

26.	How the Public Value Test is applied	12
27.	Time limits on Public Value Tests	12
28.	Public value assessments	13
29.	Joint Steering Group	13
30.	Market impact assessments	14
31.	Time limits on market impact assessments	15
32.	Piloting new services etc.	15
33.	Role of the Secretary of State in relation to new services	16
	DIGITAL SWITCHOVER	16
34.	The BBC and Digital Switchover	16
35.	Digital Switchover and the BBC's principal television services	17
36.	Analogue broadcasting up to the Digital Switchover date	17
37.	BBC's general duty to co-operate in achieving Digital Switchover	18
38.	The provision of information about Digital Switchover	18
39.	Targeted help schemes	19
40.	Financial contributions to SwitchCo Limited	19
41.	Annual Progress Report	19
	RADIO SPECTRUM	19
42.	General duty of the Trust	19
	REGULATORY OBLIGATIONS ON THE UK PUBLIC SERVICES	20
43.	Content standards	20
44.	Accuracy and impartiality	20
45.	The Fairness Code	21
46.	Programme Code Standards	22
47.	News and current affairs	22
48.	Party political broadcasts	23
49.	Programming quotas for original productions	24
50.	Programming for the nations and regions	25
51.	Programme-making in the nations and regions	27
52.	Quotas for independent productions	28
53.	Programmes to be reserved for independent production	28
54.	The Window of Creative Competition (WOCC)	29
55.	Competitive opportunities for the production of non-network programmes	30
56.	Programmes to be reserved for in-house production	30
57.	Duty to review the operation of clauses 54, 55 and 56	30
58.	Production of radio programmes and material for online services	30
59.	Code relating to provision for the deaf and visually impaired	31

60.	Power to modify targets for the purposes of clause 59	32
61.	Code relating to programme commissioning	33
62.	Retention and production of recordings	34
63.	International obligations	35
THE WORLD SERVICE		35
64.	Provision of the World Service	35
FAIR TRADING AND COMPETITIVE IMPACT		36
65.	Fair trading statements of policy	36
66.	Competitive impact	36
67.	Fair trading and competitive impact guidelines	37
THE BBC'S COMMERCIAL SERVICES		37
68.	Commercial services to be organisationally separate from the "core" BBC	37
69.	The criteria for commercial services	37
70.	Application of clause 69 to some other activities	38
71.	Approval of commercial services	38
72.	The BBC's commercial strategy	38
73.	Role of the Executive Board	38
74.	Reports and Accounts about the commercial services	39
THE FUNDING OF THE BBC		39
75.	Licence fee funding and grants from Government Departments	39
76.	Subscription services and sponsored material	41
77.	Duty of the Trust to keep the BBC's financial needs under review	42
78.	Compensation for free television licences	42
79.	Value for money examinations	42
80.	Borrowing, giving security, etc.	43
SOME GENERAL OBLIGATIONS OF THE BBC		45
81.	Defence and Emergency Arrangements	45
82.	Investigation of electro-magnetic interference	46
83.	Equal opportunities	46
84.	Training	47
85.	General provisions about arrangements made under clauses 83 and 84	47
86.	Archives	47
87.	Research	48
88.	Monitoring activities	48

COMPLAINTS	49
89. Setting the framework and procedure for handling complaints	49
90. Some overriding principles that must be respected in relation to complaints	49
THE BBC AND OFCOM	50
91. Co-operation with Ofcom	50
92. Agreements between the BBC and Ofcom	50
93. Power of Ofcom to require remedial action	51
94. Power of Ofcom to fine the BBC	52
95. Relevant Enforceable Requirements	52
SOME GENERAL MATTERS	53
96. Approvals and directions	53
97. Non-Assignment	53
98. Contracts (Rights of Third Parties) Act 1999	53
INTERPRETATION	54
99. Introduction	54
100. Meaning of “the UK Public Services”	54
101. Meaning of “commercial services” and related expressions	54
102. The meaning of “licence fee payer”	55
103. The meaning of obligations for the Trust to consult publicly	55
104. Some simple definitions in alphabetical order	56
105. Gender and number	58
106. Continuity of powers and duties	58
107. Power to make different provision for different cases	58
108. References relate to whatever time is relevant	58
109. References to legislation	58
110. Headings	58
SCHEDULE 1: TRANSITIONAL PROVISIONS	59
SCHEDULE 2: AGREEMENTS THAT ARE REVOKED BY THIS AGREEMENT	62

THIS DEED is made the 30th June 2006 BETWEEN:

- (1) HER MAJESTY'S SECRETARY OF STATE FOR CULTURE, MEDIA AND SPORT ("the Secretary of State") and
- (2) 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 Existing Charter") was granted on 1st May 1996 and provides for the continuance of the BBC for a period ending on 31st December 2006 ("the current Charter period").
- (2) The Secretary of State is applying to Her Majesty for the grant of a further Charter ("the New Charter") for the continuance of the BBC for a further period ending on 31st December 2016 and which makes provision for the process of transition from the Existing Charter to the New Charter to begin before the end of the current Charter period.
- (3) The Existing Charter is complemented by an Agreement ("the Existing Agreement") made by a Deed between the Secretary of State and the BBC dated 25th January 1996 (and amended by further Deeds dated 3rd July 2000 and 4th December 2003).
- (4) Among other things, the Existing Agreement (as amended in 2003) 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 New Charter contains provisions, particularly article 49, about the concept of a Framework Agreement.
- (6) It is appropriate that the Existing Agreement should be revoked and replaced by a new Agreement which will be a Framework Agreement for the purposes of the New Charter and make suitable provision to complement the provisions of the New Charter, including provision for the purposes of section 198.

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 important provisions at the end about how to interpret it 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 49).

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 1st January 2007, 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 65 of the Charter), but in order to facilitate the transition from the constitutional and other arrangements in force under the 1996 Charter to those under the Charter, Schedule 1 modifies this Agreement’s effect (in relation to times both during and after the Transitional Period, as defined in that Schedule).

(3) The Agreements listed in Schedule 2 are revoked as from the end of 31st December 2006, but are also subject to the provisions of Schedule 1 and of the Schedule to the Charter.

(4) In this clause—

“the 1996 Agreement” means the agreement made on 25th January 1996 between the Secretary of State and the BBC (as subsequently amended), containing provision relating to the BBC and its services;

“the 1996 Charter” means the Royal Charter for the continuance of the BBC which came into force on 1st May 1996.

4. The Independence of the BBC

The parties to this Agreement affirm their commitment to the independence of the BBC as stated in article 6 of the Charter. By entering into this Agreement, the BBC has voluntarily assumed obligations which restrict, to some extent, its future freedom of action.

THE BBC’S PUBLIC PURPOSES

5. Purpose remits

(1) Purpose remits set by the Trust under article 24(2)(a) of the Charter must comply with the requirements of this clause.

(2) There shall be a separate purpose remit for each of the six Public Purposes.

- (3) Each remit must—
 - (a) set out priorities, and
 - (b) specify how the BBC's performance against them will be judged, in relation to how the BBC promotes its Public Purposes in accordance with article 5 of the Charter (the BBC's mission to inform, educate and entertain).
- (4) The Trust must consult publicly in developing purpose remits.
- (5) Once purpose remits have been adopted, the Trust must keep them under review and may amend them. Before an amendment is made, there must be a process of public consultation appropriate to the nature of the proposed change. For example, any substantial change to the priorities set within a purpose must be subject to a particularly thorough process of full consultation.

6. Sustaining citizenship and civil society

- (1) In developing (and reviewing) the purpose remit for sustaining citizenship and civil society, the Trust must, amongst other things, seek to ensure that the BBC gives information about, and increases understanding of, the world through accurate and impartial news, other information, and analysis of current events and ideas.
- (2) In doing so, the Trust must have regard amongst other things to—
 - (a) the need to promote understanding of the UK political system (including Parliament and the devolved structures), including through dedicated coverage of Parliamentary matters, and the need for the purpose remit to require that the BBC transmits an impartial account day by day of the proceedings in both Houses of Parliament;
 - (b) the need to promote media literacy; and
 - (c) the importance of sustaining citizenship through the enrichment of the public realm.

7. Promoting education and learning

In developing (and reviewing) the purpose remit for promoting education and learning, the Trust must, amongst other things, seek to ensure that the BBC—

- (a) stimulates interest in, and knowledge of, a full range of subjects and issues through content that is accessible and can encourage either formal or informal learning; and
- (b) provides specialist educational content and accompanying material to facilitate learning at all levels and for all ages.

8. Stimulating creativity and cultural excellence

- (1) In developing (and reviewing) the purpose remit for stimulating creativity and cultural excellence, the Trust must, amongst other things, seek to ensure that the BBC—
 - (a) enriches the cultural life of the UK through creative excellence in distinctive and original content;
 - (b) fosters creativity and nurtures talent; and

- (c) promotes interest, engagement and participation in cultural activity among new audiences.
- (2) In doing so, the Trust must have regard amongst other things to—
- (a) the need for the BBC to have a film strategy; and
 - (b) the need for appropriate coverage of sport, including sport of minority interest.

9. Representing the UK, its nations, regions and communities

- (1) In developing (and reviewing) the purpose remit for representing the UK, its nations, regions and communities, the Trust must, amongst other things, seek to ensure that the BBC—
- (a) reflects and strengthens cultural identities through original content at local, regional and national level, on occasion bringing audiences together for shared experiences; and
 - (b) promotes awareness of different cultures and alternative viewpoints, through content that reflects the lives of different people and different communities within the UK.
- (2) In doing so, the Trust must have regard amongst other things to—
- (a) the importance of reflecting different religious and other beliefs; and
 - (b) the importance of appropriate provision in minority languages.

10. Bringing the UK to the world and the world to the UK

In developing (and reviewing) the purpose remit for bringing the UK to the world and the world to the UK, the Trust must, amongst other things, seek to ensure that the BBC—

- (a) makes people in the UK aware of international issues and of the different cultures and viewpoints of people living outside the UK through news and current affairs and other outputs such as drama, comedy, documentaries, educational output and sports coverage; and
- (b) brings high-quality international news coverage to international audiences.

THE BBC'S UK PUBLIC SERVICES

11. List and description of the UK Public Services

- (1) As at the date on which this Agreement is made, the BBC undertakes to provide the following as UK Public Services.
- (2) 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, providing a very broad range of programmes to a mainstream audience, with analogue Ceefax;

- (b) BBC Two: a mixed-genre channel, with versions for Scotland, Wales and Northern Ireland and variations for English regions, carrying a broad range of programmes for a mainstream audience, but with a particular focus on factual programmes, innovative comedy and drama, with analogue Ceefax;
 - (c) BBC Three: a mixed-genre channel aimed primarily at younger adult audiences;
 - (d) BBC Four: a channel providing an intellectually and culturally enriching alternative to mainstream programming on other BBC channels;
 - (e) CBeebies: a channel providing a range of programming to educate and entertain very young children;
 - (f) The CBBC Channel: a mixed-schedule channel for pre-teen children;
 - (g) BBC News 24: a 24-hour channel providing news, analysis and other informational programmes;
 - (h) BBC Parliament: a channel providing substantial live coverage of debates and committees of the UK's Parliaments and Assemblies, and other political coverage;
 - (i) BBCi: interactive digital functions, both in support of the other services and freestanding.
- (3) 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 Radio Five Live and Sports Extra: 24-hour coverage of news and sport, with a part-time extension to the service providing additional coverage of sporting events;
 - (g) BBC 6 Music: a service of popular music outside the current mainstream, together with speech output which provides context for that music;
 - (h) BBC 7: a speech-based service offering comedy, drama and readings, mainly from the BBC archive;
 - (i) BBC Asian Network: a service bringing debate, news, music, sport, entertainment and drama to audiences of British Asians, predominantly in English but also employing a range of languages spoken by British Asians.

- (4) As 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) a number of local radio services for audiences in different parts of England, providing a mixture of music and speech output.
- (5) As online services—
 - (a) bbc.co.uk: a comprehensive online content service, with content serving the whole range of the BBC's Public Purposes;
 - (b) BBC jam: a service providing interactive curriculum-based materials for learners aged 5 to 16.
- (6) The Trust may approve the launch of new UK Public Services, or the termination of or material change to the nature of existing services, subject to the requirements of clauses 16 to 20 and 23 to 33.

12. 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) Any change in those means may (where applicable) be subject to the need to amend the relevant service licence or apply the Public Value Test (see in particular clauses 16 to 20 and 23 to 33).
- (3) But 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 may, where it is cost effective and beneficial to do so, make those services available to viewers, listeners or other users more widely.
- (4) In addition to these general obligations, the BBC is also subject to specific obligations set out in clauses 34 to 36.

13. 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 the reception in the UK, by any means, of—
 - (a) the UK Public Services;
 - (b) any assistance (such as sub-titling, 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 paragraph (1), the television licence fee is not to be regarded as a charge for the reception of any UK Public Service.
- (3) Nothing in paragraph (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.

14. UK Public Service content characteristics

- (1) The content of the UK Public Services taken as a whole must be high quality, challenging, original, innovative and engaging.
- (2) Every programme included in the UK Public Broadcasting Services must exhibit at least one of those characteristics. In relation to other UK Public Services, each item of content must exhibit at least one of those characteristics.

15. The purposes of public service television

In performing its functions in relation to the UK Public Television Services, the Trust shall have regard to the purposes of public service television broadcasting set out in section 264(4) of the Communications Act 2003 and the desirability of those purposes being fulfilled in a manner that is compatible with section 264(6) of that Act.

UK PUBLIC SERVICE LICENCES

16. Service licences for UK Public Services

Clauses 17 to 20 apply to service licences issued by the Trust under article 24(2)(c) of the Charter so far as they relate to UK Public Services.

17. The content of service licences

- (1) A service licence must define the scope of the service, its aims and objectives, its headline budget and, where appropriate, other important features, having regard to the needs of licence fee payers and others who may be affected. In particular, a licence must describe the key characteristics of the service.

- (2) Each licence should clearly set out how the service will contribute to the promotion of the Public Purposes and of relevant priorities set out in purpose remits. Each licence must also include indicators against which the Trust can monitor performance. Those indicators must include taking account in some way of the views of licence fee payers.
- (3) There is a presumption that any changes to the key characteristics of a service described as such in its service licence will require the application of a Public Value Test (see clause 25(3)). The Trust should take account of this in defining the key characteristics of a service in a licence.

18. The activities which need a service licence

- (1) In performing its function of issuing service licences, it is the responsibility of the Trust to determine not only which activities of the BBC should be covered by a service licence, but how they should be covered (in particular, which activities should be covered by their own licence rather than by a licence with a broader scope covering other activities as well).
- (2) In taking such decisions the Trust should have regard to three considerations and the need to demonstrate how they have been taken into account. None of the three considerations is conclusive on its own. Sometimes different considerations may pull in different directions and the Trust must weigh them up and reach an overall conclusion on where the public interest lies.
- (3) The first consideration is a presumption that activities which involve the selection or commissioning of content and its scheduling or distribution are likely to be appropriate to be covered by a service licence.
- (4) The second consideration is the importance of delivering the greatest benefit and clarity for licence fee payers and making the decisions which would make most sense to them. In particular, activities which are recognised as a service by licence fee payers are likely to be appropriate to be covered by a service licence, and the boundaries between different service licences are likely to reflect the boundaries between services in the perception of licence fee payers.
- (5) The third consideration is the potential benefits of such a decision in providing certainty as to the scope of that service for, and opportunities for consultation with, other operators in the market place.

19. Public consultation on service licences

Before issuing a service licence, the Trust must have consulted publicly.

20. Reviews of service licences

- (1) Service licences must be reviewed periodically by the Trust, and every such licence must be reviewed at least once every five years. Subject to that requirement, the Trust may structure its programme of reviews as it thinks fit. To promote transparency, the Trust must publish information on its intended programme of reviews.
- (2) The Trust need not stick rigidly to a predetermined programme of reviews. Indeed, the Trust should undertake a review whenever it considers the public interest demands it, having regard, for example, to—
 - (a) the results of the Trust's engagement with licence fee payers;

- (b) the implications of any material changes in the purpose remits (see clause 5);
 - (c) changes in external factors such as technology or audience behaviour, which may mean that the service no longer serves its original intentions, or needs to be adapted in order to do so;
 - (d) changes in the market context which may mean that the balance of public value and market impact has shifted significantly.
- (3) In reviewing a service licence, the Trust must consult publicly.
 - (4) If, at the end of a review, the Trust reaches the conclusion that it has concerns which may need to be addressed through an amendment of the service licence, or if necessary the discontinuance of the service altogether, the Trust must convey those concerns to the Executive Board.
 - (5) The resolution of those concerns to the satisfaction of the Trust should occur in accordance with any applicable Protocols.
 - (6) This clause does not prevent the Trust from considering particular aspects of a service and expressing concerns to the Executive Board for resolution in a similar manner (which may or may not lead to a specific amendment of the service licence concerned). Nor does it prevent the Executive Board from independently making proposals to the Trust for the amendment or revocation of a service licence whenever it thinks appropriate. However, the five year requirement set out in paragraph (1) is satisfied only where the Trust has in fact reviewed the whole of the service licence as a single exercise.

STATEMENTS OF PROGRAMME POLICY

21. Statements of programme policy

- (1) The Executive Board must, at annual intervals, prepare statements of programme policy in respect of the UK Public Broadcasting Services and submit them to the Trust for approval.
- (2) The statements of programme policy prepared under this clause must—
 - (a) include such a statement in respect of each network service, setting out the BBC's proposals for how that service will, during the following year, contribute to the fulfilment of the public service remit; and
 - (b) set out, in an appropriate manner, the BBC's proposals for how the other UK Public Broadcasting Services will, during the following year, contribute to the fulfilment of that remit.
- (3) In performing their respective functions in relation to any statement of programme policy under this clause, the Trust and the Executive Board must each consider—
 - (a) the guidance given by Ofcom about the preparation of statements of programme policy for the purposes of section 266 of the Communications Act 2003, and

- (b) the reports previously published by Ofcom under sections 264 and 358 of the Communications Act 2003 (Ofcom reports on the fulfilment of the public service remit of certain television services, and annual factual and statistical reports by Ofcom in relation to certain television and radio services),

for the purpose of deciding how far such guidance and reports contain, in the view of the Trust or (as the case may be) the Executive Board, anything of relevance to the circumstances of the BBC which ought to be taken into account in preparing that statement.

- (4) Every statement of programme policy prepared and approved under this clause—
 - (a) must be published by the BBC as soon as practicable after it is approved; and
 - (b) must be published in such manner as the Trust considers appropriate.
- (5) The Trust must monitor the BBC’s performance in the carrying out of the proposals contained in each statement of programme policy prepared under this clause, and each annual report presented by the Corporation pursuant to article 45 of the Charter shall contain a report on the performance of the BBC in the carrying out, during the period to which the statement relates, of the proposals contained in any relevant statement.
- (6) For that purpose, a statement is relevant in relation to a particular annual report if it relates to a period ending before the date on which that report is submitted to the Secretary of State pursuant to article 45 of the Charter and after the date on which the preceding such report was so submitted.
- (7) For the purposes of this clause—

“network service” means a television or radio service designed for audiences across the UK, and the BBC—

- (a) may treat any such service provided in regional variations as a single such service, but
- (b) may treat the actual regional variations within a service so treated as if they were comprised within the other UK Public Broadcasting Services mentioned in paragraph (2)(b); and

“the public service remit” means the BBC’s programming obligations under the Charter and this Agreement so far as they apply to the UK Public Broadcasting Services.

NON-SERVICE ACTIVITIES

22. Non-service activities

- (1) This clause applies to “non-service activities”, by which we mean those activities of the BBC which do not have the nature of a service and are therefore outside the scope of many of the formal requirements expressed in this Agreement (such as the system of service licences and the detailed requirements about the Public Value Test and market impact assessments).

- (2) Although the nature and potential significance of non-service activities will vary significantly, such that it is not appropriate to impose in relation to them in a rigid way all the requirements that apply to services, the Trust must bear in mind the fact that non-service activities may be significant and that they may raise issues of public value and have market implications.
- (3) It is the responsibility of the Trust to ensure that the principles which underlie the treatment of services are, where relevant, applied to non-service activities in a way which the Trust considers appropriate to the circumstances. For example, this may involve an evidence-based process of investigating and assessing the public interest and market implications before making a significant change in a non-service activity, even if the application of the Public Value Test in its full rigour is considered inappropriate (though the Trust should not assume that a full Public Value Test will not sometimes be appropriate even for non-service activities).
- (4) This clause does not apply to any non-service activities which are—
 - (a) within the definition of “commercial services” in clause 101, or
 - (b) undertaken primarily with the purpose of producing an effect outside the UK.

CHANGES TO THE BBC’S UK PUBLIC SERVICES

23. Introduction

- (1) During the lifetime of the Charter, the BBC will need to be able to modify its UK Public Services – for example, to respond to changes in technology, culture, market conditions, public expectations and views, etc.
- (2) However, any significant proposal for change must be subject to full and public scrutiny. The means by which this scrutiny will be brought about will be the Public Value Test. Clauses 24 to 31 below explain the Public Value Test and clause 33 explains the role of the Secretary of State.

24. The Public Value Test

- (1) The Public Value Test is a means by which public value and market impact are taken into account.
- (2) Clause 25 explains when the Public Value Test must be applied and clauses 26 to 31 explain what must happen when the Test is applied.

25. When the Public Value Test must be applied

- (1) The Public Value Test must be applied before a decision is taken to make any significant change to the UK Public Services (which can include introducing a new service or discontinuing a service).
- (2) Whether any proposals for change meet this criterion of significance is a matter for the judgment of the Trust. In exercising that judgment, the Trust must have regard to the following considerations (and to the presumption explained in paragraphs (3) and (4))—

- (a) impact – the extent to which the change is likely to affect relevant users and others;
 - (b) the financial implications of the change;
 - (c) novelty – the extent to which the change would involve the BBC in a new area of activity for the BBC, as yet untested;
 - (d) duration – how long the activity will last.
- (3) The Trust should presume that any change which requires a new service licence or any amendment of the key characteristics described as such in a service licence ought to be subject to a Public Value Test. Where this presumption applies, the Trust may still decide that there is no need for the Public Value Test to be applied, but in that case the onus is on the Trust to justify departing from the presumption. For example, the Trust may be satisfied that changes in circumstances since the issue of a relevant existing service licence mean that a particular change to the key characteristics set out in the licence would not, contrary to what had been anticipated at the time, meet the criterion for a Public Value Test.
- (4) Before exercising its judgment under this clause, the Trust must investigate or otherwise inform itself of any facts or considerations which it considers potentially relevant to the exercise of that judgment. What this means in practice will vary according to the circumstances. Sometimes, for example, the proposed change may be so manifestly significant that the Trust will not need to look beyond the nature of the proposed change itself before concluding that it would be a significant change. In other cases, which are less clear cut, the Trust may feel it appropriate to investigate more thoroughly competing arguments for and against the application of the Public Value Test.

26. How the Public Value Test is applied

- (1) The application of the Public Value Test involves several elements.
- (2) The first is a public value assessment (see clause 28).
- (3) The second is a market impact assessment (see clause 30).
- (4) The Trust must consider the outcome of the public value assessment and the market impact assessment and reach provisional conclusions regarding the proposed change.
- (5) Those assessments must be published.
- (6) The Trust must consult about its provisional conclusions reached under paragraph (4) and then proceed to reach a final conclusion about whether the proposed change should be made. In particular, the Trust must be satisfied that any likely adverse impact on the market is justified by the likely public value of the change before concluding that the proposed change should be made.

27. Time limits on Public Value Tests

- (1) A Public Value Test must be completed within six months of the date on which the Trust determines that it is to be applied.
- (2) At its discretion, where justified by the circumstances, the Trust may allow a longer period.

28. Public value assessments

- (1) The purpose of a public value assessment is to ascertain the likely public value of the proposed change.
- (2) In general terms, a public value assessment should include an assessment of the following factors—
 - (a) the value which licence fee payers would place on the proposed change as individuals;
 - (b) the value which the proposed change would deliver to society as a whole through its contribution to the BBC's Public Purposes, but having regard to article 5 of the Charter and the contribution of the proposed change to the priorities set out in the BBC's purpose remits;
 - (c) the value for money of the proposed change and its cost (including the potential financial implications if the proposed change were not to be made).
- (3) As the nature of likely or potential public value may differ widely according to the nature of the change proposed, the Trust must at the outset consider very carefully—
 - (a) the aspects of public value which may be relevant; and
 - (b) how those aspects should be explored and evaluated (but always including public consultation).
- (4) In this context, the concept of "public value" means the public value of the change bearing in mind that the service or activities concerned involve the BBC, and the need for the BBC to comply with all applicable restrictions (for example, those in article 5(2) of the Charter).

29. Joint Steering Group

- (1) In respect of market impact assessments, the Trust and Ofcom must together establish a Joint Steering Group.
- (2) The Trust and Ofcom must jointly make arrangements for the operation and constitution of the Group that are based on the principle of an equality of status and participation as between the Trust and Ofcom, and those arrangements must, in particular, provide that—
 - (a) the Group's membership must consist of an equal number of members drawn from the Trust and Ofcom respectively, but may also include some independent members;
 - (b) both the Trust and Ofcom are to have an equality of opportunities to appoint the Group's chairman from amongst the membership of the Group;
 - (c) accordingly, each successive market impact assessment is to be overseen by the Group under the chairmanship of an appointee of the Trust or (as the case may require) an appointee of Ofcom on an alternating basis, unless otherwise agreed; and
 - (d) the chairman is not to have a casting vote.
- (3) Subject to sub-paragraph (2), the precise composition of the Group is to be agreed between the Trust and Ofcom.

- (4) Where a Public Value Test is applied, the Trust must inform the Group of the need for a market impact assessment. The Group must then set and publish the terms of reference for the market impact assessment. The terms of reference may specify how the methodology set under clause 30 is to be applied.
- (5) The Group will be responsible for agreeing the potential relevant markets for the assessment after considering advice from Ofcom. Where there are a number of potential markets identified by the Group, the market impact assessment shall report on each potential market in the absence of agreement to do otherwise.
- (6) The Group will also be responsible for ensuring that the market impact assessment is conducted in a manner appropriate to the nature of the Public Value Test and to a suitable schedule.
- (7) The Trust and Ofcom must make suitable arrangements for working together to ensure that market impact assessments are conducted in a timely manner.
- (8) If, in respect of any matter arising under this clause, the Group is unable to reach agreement on suitable arrangements or their implementation, the matters in dispute may be referred to the Chairman of the Trust and the Chairman of Ofcom for resolution by them jointly (but this does not apply in the case of the matters mentioned in subparagraphs (2)(c) and (5), which make specific provision for the position in the absence of agreement to the contrary).

30. Market impact assessments

- (1) Whenever the Public Value Test is applied, Ofcom have the responsibility of providing the market impact assessment.
- (2) Ofcom may discharge that responsibility by providing either an assessment which they have themselves made or one which they have commissioned from a third party which is independent of the BBC.
- (3) Such assessments must be made and provided in accordance with a methodology agreed between the Trust and Ofcom. The methodology—
 - (a) must provide for a market impact assessment of a scale and scope appropriate to the significant change in contemplation and its potential market impact;
 - (b) must take account of the need for a market impact assessment to be carried out in accordance with terms of reference set under clause 29(4); and
 - (c) may provide for the Joint Steering Group to determine, after public consultation, that a simplified approach is appropriate to be used for a particular assessment.
- (4) The agreed methodology must be applied within the parameters set by the terms of reference and relevant markets agreed under clause 29.
- (5) What Ofcom do under this clause, and the work of any third party in relation to a market impact assessment which it has been commissioned to make, will be overseen by the Joint Steering Group. However, the substantive findings of the assessment remain a matter for the judgment of Ofcom.

31. Time limits on market impact assessments

- (1) A market impact assessment must be completed within three months of the date on which terms of reference are set by the Joint Steering Group.
- (2) At its discretion, where justified by the circumstances, the Group may allow a longer period.

32. Piloting new services etc.

- (1) This clause is about the piloting of potential or proposed changes to the UK Public Services.
- (2) Paragraph (3) applies where the Executive Board—
 - (a) proposes a change to the UK Public Services which requires the approval of the Trust, and
 - (b) has properly undertaken a pilot in connection with developing its proposal or with a view to informing the Trust’s evaluation of the proposal.
- (3) In those circumstances, but subject to paragraphs (4) and (5), the Executive Board may continue the pilot after either or both of the following—
 - (a) the Executive Board applies to the Trust for approval, or
 - (b) the Trust has begun any process preliminary to deciding whether the change should be approved.
- (4) However, if and when the Trust determines that a Public Value Test is to be applied, the Executive Board may continue the pilot only with the approval of the Trust, given in accordance with the terms of a Protocol adopted and published for that purpose.
- (5) The Protocol—
 - (a) may also specify circumstances in which the approval of the Trust is required for the piloting of a potential or proposed change to the UK Public Services by virtue of more general provisions of the Charter or this Agreement, and
 - (b) must specify requirements which the Trust considers appropriate to secure that—
 - (i) piloting approved in accordance with such a Protocol or such general requirements, and
 - (ii) the continuation of a pilot approved under paragraph (4),

will be of the smallest possible scale and duration that are compatible with the legitimate purpose for which the approval is given.
- (6) In this clause, “continue the pilot” includes continuing the pilot with or without modifications, and undertaking related activities.

33. Role of the Secretary of State in relation to new services

- (1) Any proposal for the introduction of a new service is subject to a procedural veto by the Secretary of State.
- (2) Before the BBC starts providing such a service, the Trust must have—
 - (a) notified the Secretary of State of the proposal; and
 - (b) been informed by the Secretary of State that she does not intend to use her procedural veto.
- (3) In considering whether to use her procedural veto, the role of the Secretary of State is a limited one. She is not to concern herself with the substantive merits of the proposal, but only with whether the Trust has reached its decision to introduce the new service following appropriate processes which conform to the requirements of the Charter and this Agreement.
- (4) For the purposes of this clause, “the introduction of a new service” means anything which the Trust proposes to authorise by a new service licence rather than the amendment of an existing licence.

DIGITAL SWITCHOVER

34. The BBC and Digital Switchover

- (1) This clause and those that follow impose obligations on the BBC in relation to the progressive replacement of the analogue broadcasting of television services within the UK with digital broadcasting of those services (referred to in this Agreement as “Digital Switchover”).
- (2) For the purposes of these clauses, the BBC’s “principal television services” are—
 - (a) such of the television services listed in clause 11(2) as the BBC may be providing at any given time; and
 - (b) any other television service that the BBC is providing at that time and that is designed for audiences across the UK (with or without national versions or regional variations) or designed principally for audiences in a particular part of the UK.
- (3) For the purposes of these clauses, the BBC’s “analogue television services” are such of the BBC’s principal television services as are at the date of this Agreement being broadcast by means of terrestrial broadcasting in analogue form (whether or not they are also being so broadcast in digital form at that time).
- (4) The BBC must arrange the provision of its principal television services in a way that ensures—
 - (a) that the obligations in clause 35 in relation to the provision of those services in digital form are fulfilled; and

- (b) that, until the Digital Switchover date, the analogue television services continue to be provided by terrestrial broadcasting in analogue form, according to the provisions in clause 36.
- (5) In this clause and clauses 35 and 36, the “Digital Switchover date” means—
- (a) in relation to Great Britain, Northern Ireland and the Isle of Man, 31 December 2012 or such other date as the Secretary of State may specify in a direction to the BBC; and
 - (b) in relation to the Channel Islands (or any of them) such date as the Secretary of State may so specify.

35. Digital Switchover and the BBC’s principal television services

- (1) No later than the Digital Switchover date, the BBC must secure the objective that substantially the same proportion of households in the UK as can, at the date of this Agreement, receive the analogue television services in analogue form by means of terrestrial broadcasting (that is to say, through a television aerial), can receive all the BBC’s principal television services in digital form by that means.
- (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) The BBC is to secure the objective described in paragraph (1) in accordance with a coverage plan approved by the Secretary of State; and that coverage plan—
 - (a) must, in particular, specify the timetable according to which the BBC must progressively cease to provide its principal television services in analogue form and provide them instead in digital form, and the dates by which and order in which that is to take place in different areas of the UK;
 - (b) may also specify the location, power and mode of transmission of the transmitters to be used, and the frequencies to be used, for the terrestrial broadcasting of those services in digital form;
 - (c) may specify geographical locations, or descriptions of such locations, where the BBC is not obliged to provide its principal television services by means of terrestrial broadcasting; and
 - (d) may make provision in relation to the continued terrestrial broadcasting of the analogue television services in analogue form (see clause 36).
- (4) The Secretary of State must consult Ofcom before approving a coverage plan.
- (5) The Secretary of State may by a direction require the BBC to alter any coverage plan approved under paragraph (4), but must not do so without first consulting the BBC and Ofcom.

36. Analogue broadcasting up to the Digital Switchover date

- (1) The BBC must continue to provide the analogue television services in analogue form by means of terrestrial broadcasting if, and to the extent that, it is required to do so—

- (a) by provision made in a coverage plan approved under clause 35, or
 - (b) by directions given for the purpose by the Secretary of State after consulting the BBC and Ofcom.
- (2) But the Secretary of State cannot give a direction under paragraph (1)(b)—
- (a) if it purports to have effect after the Digital Switchover date;
 - (b) if it is inconsistent with any provision of the coverage plan.
- (3) A coverage plan or a direction under paragraph (1)(b) may—
- (a) make provision requiring the BBC to continue to provide in analogue form all of an analogue television service, or only part of such a service; and
 - (b) address how regional variations of any service are to be treated.
- (4) To the extent that any analogue television service is required to be provided in analogue form by means of terrestrial broadcasting, the programmes included in the analogue version must (so far as practicable) be—
- (a) the same as those included in the digital version; and
 - (b) broadcast at the same times as they are broadcast in the digital version.

37. BBC's general duty to co-operate in achieving Digital Switchover

- (1) The BBC must use all reasonable endeavours to co-operate in the administration, organisation and implementation of Digital Switchover, in all respects, promptly and in good faith, with—
- (a) public service broadcasters and holders of licences to provide television multiplex services under Part 1 of the Broadcasting Act 1996,
 - (b) any Department of Her Majesty's Government in the United Kingdom involved in the planning or implementation of Digital Switchover,
 - (c) SwitchCo Limited (which is also known as "Digital UK"), and
 - (d) any other persons notified to the BBC for the purposes of this clause by the Secretary of State.
- (2) The inclusion in this Agreement of provisions which impose some more specific duties on the BBC in relation to Digital Switchover does not imply anything restrictive about the scope of paragraph (1).

38. The provision of information about Digital Switchover

- (1) The BBC must use all reasonable endeavours to ensure that all viewers of any of the UK Public Television Services in analogue form are—
- (a) aware, in general terms, of the nature of Digital Switchover, its consequences (including practical options for continuing to receive the UK Public Television Services), the reasons for it, and its timetable;

- (b) informed of any date (a “Regional Switchover Date”) when it is intended that all or any of the UK Public Television Services which they view will cease to be broadcast in analogue form in the area in which they view them, not less than two years before that date;
 - (c) provided, during the nine months preceding a Regional Switchover Date, with information about how they can continue to receive affected services after that date.
- (2) The Executive Board must draw up, keep under review and, when it or the Trust thinks appropriate, revise a communications plan for achieving what is required by paragraph (1). Any such plan (or revision) must be approved by the Trust.

39. Targeted help schemes

- (1) The BBC must comply with a scheme agreed (whether after or in anticipation of the making of this Agreement) with the Secretary of State concerning the provision of specified help to specified categories of persons for the purpose of enabling them to continue to view the UK Public Television Services when and after they are affected by Digital Switchover; and in this paragraph, “specified” means specified in the scheme.
- (2) Once made, the scheme may be amended only in accordance with whatever provisions the scheme itself contains about how it may be amended.
- (3) What the BBC does for the purposes of this clause is not to be regarded as—
- (a) requiring a service licence;
 - (b) involving the provision of a service for any of the purposes of this Agreement; or
 - (c) falling within the scope of clause 22.

40. Financial contributions to SwitchCo Limited

The BBC must make promptly all financial contributions which it is legally required to make to SwitchCo Limited.

41. Annual Progress Reports

The Trust must provide the Secretary of State with an annual report on what the BBC has done for the purpose of complying with clauses 34 to 40 of this Agreement.

RADIO SPECTRUM

42. General duty of the Trust

- (1) It is the duty of the Trust to 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, where it appears to her 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,

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).

REGULATORY OBLIGATIONS ON THE UK PUBLIC SERVICES

43. Content standards

- (1) The Trust must approve guidelines designed to secure appropriate standards in the content of the UK Public Services.
- (2) The more specific obligations set out below are not intended to restrict the general scope of paragraph (1).

44. Accuracy and impartiality

- (1) The BBC must do all it can to ensure that controversial subjects are treated with due accuracy and impartiality in all relevant output.
- (2) In applying paragraph (1), a series of programmes may be considered as a whole.
- (3) The UK Public Services must not contain any output which expresses the opinion of the BBC or of its Trust or Executive Board on current affairs or matters of public policy other than broadcasting or the provision of online services.
- (4) Paragraph (3) does not apply to output which consists of—
 - (a) proceedings in either House of Parliament;
 - (b) proceedings in the Scottish Parliament, the Welsh Assembly or the Northern Ireland Assembly; or
 - (c) proceedings of a local authority or a committee of two or more local authorities.
- (5) The Trust must—
 - (a) draw up and from time to time review a code giving guidance as to the rules to be observed in connection with the application of paragraphs (1) to (4), and
 - (b) do all it can to secure that the code is complied with.
- (6) The rules in the code must, in particular, take account of the following matters—
 - (a) that due impartiality should be preserved by the BBC as respects major matters falling within paragraph (b) of the definition of “relevant output” (in paragraph (8)) as well as matters falling within it taken as a whole; and
 - (b) the need to determine what constitutes a series of programmes for the purposes of paragraph (2).

- (7) The rules must, in addition, indicate to such extent as the Trust considers appropriate—
- (a) what due impartiality does and does not require, either generally or in relation to particular circumstances;
 - (b) the ways in which due impartiality may be achieved in connection with programmes of particular descriptions;
 - (c) the period within which a programme should be included in a service if its inclusion is intended to secure that due impartiality is achieved for the purposes of paragraph (1) in connection with that programme and any programme previously included in that service taken together; and
 - (d) in relation to any inclusion in a service of a series of programmes which is of a description specified in the rules—
 - (i) that the dates and times of the other programmes comprised in the series should be announced at the time when the first programme so comprised is included in that service, or
 - (ii) if that is not practicable, that advance notice should be given by other means of subsequent programmes so comprised which include material intended to secure, or assist in securing, that due impartiality is achieved in connection with the series as a whole;

and the rules must, in particular, indicate that due impartiality does not require absolute neutrality on every issue or detachment from fundamental democratic principles.

- (8) For the purposes of this clause—

“relevant output” means the output of any UK Public Service which—

- (a) consists of news, or
- (b) deals with matters of public policy or of political or industrial controversy;

“programme”, except in paragraph (7)(c) and (d), includes any item of output in non-programme form; and

“series of programmes”, except in paragraph (7)(d), includes items of output in non-programme form which are analogously linked.

45. The Fairness Code

- (1) The BBC must comply with the Fairness Code—

- (a) in connection with the provision of the UK Public Broadcasting Services, and
- (b) in relation to the programmes included in those services.

- (2) “The Fairness Code” means the code for the time being in force under section 107 of the Broadcasting Act 1996.

46. Programme Code Standards

- (1) The BBC must observe Relevant Programme Code Standards in the provision of the UK Public Broadcasting Services.
- (2) “Relevant Programme Code Standards” means those standards for the time being set under section 319 of the Communications Act 2003—
 - (a) which relate to the objectives set out in the following paragraphs of subsection (2) of that section, that is to say—
 - (i) paragraph (a) (protection of persons under the age of eighteen);
 - (ii) paragraph (b) (omission of material likely to encourage or incite any crime or disorder);
 - (iii) paragraph (e) (exercise of responsibility with respect to the content of religious programmes);
 - (iv) paragraph (f) (application of generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material); and
 - (v) paragraph (l) (refraining from use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred), but
 - (b) only to the extent that they do not concern the accuracy or impartiality of the content of any programme included in the UK Public Broadcasting Services.

47. News and current affairs

- (1) The Trust must impose on the Executive Board the requirements it considers appropriate for securing—
 - (a) that, in relation to BBC One, news programmes are broadcast for viewing at intervals throughout the period for which the service is provided;
 - (b) that, in each year, the time allocated to the broadcasting of news programmes included in BBC One constitutes no less than what appears to the Trust to be an appropriate amount of time;
 - (c) that the time allocated to the broadcasting of news programmes included in BBC One is split in what appears to the Trust to be an appropriate manner between peak viewing times and other times;
 - (d) that, in each year, the time allocated to the broadcasting of current affairs programmes included in BBC One and BBC Two taken together constitutes no less than what appears to the Trust to be an appropriate amount of time;
 - (e) that the time allocated to the broadcasting of current affairs programmes included in BBC One and BBC Two taken together is split in what appears to the Trust to be an appropriate manner between peak viewing times and other times.

- (2) Before imposing any requirements under paragraph (1), the Trust must consult Ofcom on its proposals for such requirements, and shall have regard to any comments made by Ofcom upon those proposals.
- (3) Subject to paragraphs (4) and (5), the Trust must not, without first securing the agreement of Ofcom, impose requirements the effect of which would be to allow any of the following—
 - (a) the hours of news programmes included, in any year, in BBC One,
 - (b) the hours of news programmes included, in any year, in BBC One which are broadcast at peak viewing times,
 - (c) the hours of current affairs programmes included, in any year, in BBC One and BBC Two taken together,
 - (d) the hours of current affairs programmes included, in any year, in BBC One and BBC Two taken together which are broadcast at peak viewing times,

to fall, respectively, below the number of hours which were included in each such category in the year 2002.

- (4) A figure must be agreed to represent the number of hours which were included, in the year 2002, in each of the categories set out in sub-paragraphs (a) to (d) of paragraph (3) respectively, and that figure shall, subject to paragraph (5), be used for the purposes of paragraph (3).
- (5) Where the agreed meaning of “year” for the purposes of this clause includes any period which is longer or shorter than the year 2002, it must be agreed whether, and if so in what respect, the figures agreed under paragraph (4) shall be subject to any adjustment for the purpose of enabling them to relate fairly to any such period.
- (6) For the purposes of this clause—

“agreed” means agreed in accordance with clause 92;

the meaning of “current affairs” must be agreed;

the meaning of “news” must be agreed;

“peak viewing time”, in relation to a service, means a time agreed to be, or to be likely to be, a peak viewing time for that service; and

the meaning of “year” must be agreed.

48. Party political broadcasts

- (1) The BBC must include, in some or all of the UK Public Broadcasting Services, party political broadcasts and referendum campaign broadcasts.
- (2) The Trust must determine—
 - (a) which of the UK Public Broadcasting Services are in principle to include party political broadcasts and referendum campaign broadcasts; and

- (b) the basis on which, and the terms and conditions subject to which, such broadcasts are to be included in them.
- (3) In particular, the Trust may determine, so far as they are permitted so to do by 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)—
 - (a) the political parties on whose behalf party political broadcasts may be made; and
 - (b) the length and frequency of party political broadcasts and referendum campaign broadcasts.
- (4) In this clause, “referendum campaign broadcast” has the meaning given by section 127 of the Political Parties, Elections and Referendums Act 2000.

49. Programming quotas for original productions

- (1) In relation to each of the UK Public Television Services, the BBC must comply with agreed arrangements for securing—
 - (a) that the time allocated, in each year, to the broadcasting of original productions included in that service is no less than what appears to the parties to be an appropriate proportion of the total amount of time allocated to the broadcasting of all the programmes included in the service; and
 - (b) that the time allocated to the broadcasting of original productions is split in what appears to the parties to be an appropriate manner between peak viewing times and other times.
- (2) The proportion determined by the parties for the purposes of paragraph (1) above—
 - (a) shall, in the case of each service, be such proportion as the parties consider appropriate for ensuring that the service is consistently of a high quality; and
 - (b) may, for the purposes of paragraph (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 agreed arrangements may provide—
 - (a) that specified descriptions of programmes are to be excluded in determining the programmes a proportion of which is to consist of original productions;
 - (b) that, in determining for the purposes of the arrangements whether a programme is of a description of programmes excluded by virtue of sub-paragraph (a) of this paragraph, regard is to be had to any guidance prepared and published, and revised, by Ofcom.
- (4) This clause must be interpreted in accordance with, and have effect subject to, clause 92, which explains such things as “agreed” and “the parties”, and how the process of reaching agreement should work.
- (5) For the purposes of this clause—

“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 (programming quotas for original productions in relation to licensed public service channels) in relation to a licensed public service channel, except that—

- (a) to any extent that such an order makes different provision for different cases, the agreed arrangements must determine which of those cases shall be taken to be relevant for the purposes of this clause; and
- (b) to any extent that such an order makes provision in terms which are not apt to apply for the purposes of this clause, the agreed arrangements must 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;

“peak viewing time”, in relation to a service, means a time agreed to be, or to be likely to be, a peak viewing time for that service; and

the meaning of “year” must be agreed.

50. Programming for the nations and regions

- (1) The Trust must impose on the Executive Board the requirements it considers appropriate for securing—
 - (a) that what appears to the Trust to be a sufficient amount of time is given in the programmes included in the Relevant Services to what appears to it to be a suitable range of programmes (including, in the case of BBC One, regional news programmes) which are of regional interest;
 - (b) that the regional programmes included in the Relevant Services are of high quality;
 - (c) that what appears to the Trust to be a suitable proportion of the regional programmes included in the Relevant Services consists of programmes made in the relevant area;
 - (d) that the regional news programmes included in BBC One are broadcast for viewing at intervals throughout the period for which the service is provided and, in particular, at peak viewing times; and
 - (e) that what appears to the Trust to be a suitable number of the hours of regional programmes that—
 - (i) are included in the relevant services, and
 - (ii) are not regional news programmes included in BBC One, are broadcast for viewing—
 - (i) at times which are peak viewing times in relation to any particular service in which they are in fact included; and
 - (ii) at times immediately preceding or following those times.

- (2) Before imposing any requirements under paragraph (1), the Trust must consult Ofcom on its proposals for such requirements, and must have regard to any comments made by Ofcom upon those proposals.
- (3) Subject to paragraphs (4) and (5), the Trust must not, without first securing the agreement of Ofcom, 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 Relevant Services,
 - (b) the proportion of regional programmes included, in any year, in the Relevant Services which consist of programmes made in the relevant area,
 - (c) the hours of regional news programmes included, in any year, in BBC One,
 - (d) in relation to any year, the number of hours mentioned in paragraph (1)(e),
- 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 2002.
- (4) A figure must be agreed to represent the number of hours or, as the case may be, the proportion of programmes which were included, in the year 2002, in each of the categories set out in sub-paragraphs (a) to (d) of paragraph (3) respectively, and that figure shall, subject to paragraph (5), be used for the purposes of paragraph (3).
- (5) Where the agreed meaning of “year” for the purposes of this clause includes any period which is longer or shorter than the year 2002, it must be agreed whether, and if so in what respect, the figures agreed under paragraph (4) shall be subject to any adjustment for the purpose of enabling them to relate fairly to any such period.
- (6) For the purposes of this clause, a programme is of 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.
- (7) For the purposes of this clause—
- “agreed” means agreed in accordance with clause 92;
- “particular service” means any of the services which, together, form the Relevant Services;
- “peak viewing time”, in relation to a service, means a time agreed to be, or to be likely to be, a peak viewing time for that service;

“regional programme”, in relation to BBC One or the Relevant Services, means a programme included in BBC One or, as the case may be, the Relevant Services, with a view to its being of regional interest, and “regional news programmes” is to be interpreted accordingly;

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

“the Relevant Services” means BBC One and BBC Two, taken together; and

the meaning of “year” must be agreed.

51. Programme-making in the nations and regions

(1) The BBC must comply with agreed arrangements for securing—

- (a) that what appears to the parties 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) that the network programmes that are made in the United Kingdom outside the M25 area (taken together) constitute what appears to the parties to be a suitable range of programmes;
- (c) that what appears to the parties 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; and
- (d) that the different programme production centres to which that expenditure is referable constitute what appears to the parties to be a suitable range of such production centres.

(2) A proportion is not to be regarded by the parties as suitable for the purposes of a provision of this clause if it constitutes less than a significant proportion of the programmes or expenditure in question.

(3) This clause must be interpreted in accordance with, and have effect subject to, clause 92, which explains such things as “agreed” and “the parties”, and how the process of reaching agreement should work.

(4) For the purposes of this clause—

“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 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.

52. Quotas for independent productions

- (1) 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 One is allocated to the broadcasting of a range and diversity of independent productions.
- (2) 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.
- (3) The BBC must comply with directions given to it by Ofcom for the purpose of—
 - (a) carrying forward to one or more subsequent years determined in accordance with the direction any shortfall for any year in its compliance with the duties imposed by paragraphs (1) and (2); and
 - (b) thereby increasing the percentage applicable for the purposes of those duties to the subsequent year or years.
- (4) The duties imposed by virtue of paragraphs (1) and (2) are in addition to any Relevant Statutory Duty, and nothing in this clause 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).
- (5) For the purposes of this clause—

“the Act” means 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;

“Relevant Statutory Duty” means any duty imposed by sub-paragraph (1) or (4) of paragraph 1 of Schedule 12 to the Act; and

the meaning of “year” must be agreed in accordance with clause 92.

53. Programmes to be reserved for independent production

- (1) The BBC must ensure that it reserves enough of its programmes for making as independent productions to ensure that the BBC meets, in each year, its obligations under

paragraph 1 of Schedule 12 to the Communications Act 2003 (quotas for independent productions).

- (2) No programmes which are made as independent productions following any process of competition (whether through the WOCC, described below, or otherwise) which might have resulted in their not being made as independent productions can be counted towards meeting the requirement imposed by this clause.
- (3) The BBC may reserve for making as independent productions more programmes than are necessary to comply with paragraph (1).

54. The Window of Creative Competition (WOCC)

- (1) The BBC must use its best endeavours to ensure that 50% of Total Relevant Air Time in any year is allocated to the broadcasting of a range and diversity of programmes which were made either—
 - (a) as independent productions as a result of having been reserved for making as independent productions, or
 - (b) through the Window of Creative Competition (“the WOCC”).
- (2) A programme is made through the WOCC if, regardless of who actually makes the programme, the BBC—
 - (a) gave its own in-house production facility and external producers (whether independent producers or not), a genuine opportunity to bid on a fair and transparent basis for the right to make the programme, and
 - (b) evaluated any such bids on a fair and transparent basis.
- (3) The requirement in paragraph (2)(a) can be met even if the precise details of the programme were not necessarily fixed at the time the opportunity was given (for example, where the opportunity related to meeting a requirement for a particular type of programme, which left bidders with some flexibility in deciding what programmes to propose).
- (4) In this clause—

“network programme” means programmes to be made with a view to their being broadcast throughout the UK;

“range” means a range of programmes in terms of cost of acquisition as well as in terms of the types of programme involved;

“Relevant Programmes”, in relation to the UK Public Television Services, means network programmes which are “qualifying programmes” in relation to those services for the purposes of paragraph 1 of Schedule 12 to the Communications Act 2003 (quotas for independent productions); and

“Total Relevant Air Time” means the total amount of time allocated to the broadcasting of Relevant Programmes on the UK Public Television Services taken together.

55. Competitive opportunities for the production of non-network programmes

The Trust shall ensure that suitable arrangements are in place to provide appropriate opportunities for competition between in-house and external producers for the provision of programmes which are not intended to be “network programmes” within the meaning of clause 54 (see clause 54(4)).

56. Programmes to be reserved for in-house production

- (1) The BBC must use its best endeavours to ensure that 50% of Total Relevant Air Time in any year is allocated to the broadcasting of a range and diversity of programmes which were made by the BBC through its in-house production facility as a result of having been reserved for making through that facility.
- (2) In paragraph (1), “range” and “Total Relevant Air Time” have the same meanings as in clause 54 (see clause 54(4)).

57. Duty to review the operation of clauses 54, 55 and 56

- (1) The Trust must, at least every two years, review the operation of clauses 54, 55 and 56.
- (2) In conducting such a review, the Trust must investigate thoroughly the BBC’s compliance with those clauses and consider whether any aspect of the BBC’s arrangements for complying with them ought to be modified. Amongst other things, the Trust should look at—
 - (a) whether an appropriately wide range and diversity of programmes have been made through the WOCC; and
 - (b) whether the geographical location and size of external producers who made bids to make programmes through the WOCC suggests that the process of competition has been fair and transparent.

58. Production of radio programmes and material for online services

- (1) The Trust must impose on the Executive Board the requirements it considers appropriate for securing—
 - (a) that what appears to the Trust to be a suitable proportion of—
 - (i) the programmes included in those radio services (taken together) which are UK Public Services, and
 - (ii) the material available to members of the public as part of those online services (taken together) which are UK Public Services,consists of programmes or, as the case may be, material made by producers external to the BBC; and
 - (b) that what appears to the Trust to be a suitable range and diversity of such programmes and material is made by such persons.
- (2) In determining for the purposes of paragraph (1) what is a suitable proportion of programmes or material, and what is a suitable range and diversity of programmes or material, the Trust must have regard (in particular) to the desirability (in the interests of listeners and users of the BBC’s online services) of both—

- (a) encouraging an appropriate degree of competition in the provision of radio programmes and of material to be included in online services; and
 - (b) maintaining within the BBC in-house capacity for making such programmes and material on a substantial scale.
- (3) In this clause, “range”, in relation to programmes or material, means a range of programmes or (as the case may be) material in terms of cost of acquisition as well as in terms of the types of programmes or material involved.

59. Code relating to provision for the deaf and visually impaired

- (1) The starting point is that the BBC must, in providing the UK Public Television Services, observe the Code maintained by Ofcom under section 303 of the Communications Act 2003 (referred to in this clause as “the Act”). That is a code relating to provision for the deaf and visually impaired. The Code applies to some other broadcasters by virtue of statutory provisions, but would not apply to the provision of the UK Public Television Services by the BBC but for this clause.
- (2) However, we intend that the Code should apply in a modified way. The rest of this clause explains those modifications. These need to be read in conjunction with the detail of the Act, particularly section 303. The modifications apply only for the purpose of applying the Code, by virtue of this clause, to the provision of the UK Public Television Services by the BBC.
- (3) The Code shall, as a general rule, apply separately to the provision of each of the UK Public Television Services by the BBC in the same way that it applies to the provision of Channel 4 by the Channel Four Television Corporation (but see paragraphs (4) and (7)).
- (4) However, the Code shall have effect as if the excluded programmes were those agreed for the purposes of this clause instead of those applicable to Channel 4. “Excluded programmes” are the descriptions of programmes set out in the Code under section 303(7) of the Act. (Excluded programmes play an important role – see in particular section 303(4) to (9) of the Act.)
- (5) In agreeing the excluded programmes, the parties must have regard, in particular, to the matters set out in paragraphs (a) to (f) of section 308(8) of the Act.
- (6) The exclusions that may be agreed—
- (a) may include different descriptions of programmes in relation to different UK Public Television Services; and
 - (b) in the case of a UK Public Television Service which the parties are satisfied (having regard to the matters mentioned in paragraph (5) above) is a special case, may include all the programmes included in the service.
- (7) The Code shall have effect as if the relevant date in relation to any of the UK Public Television Services were that fixed by paragraph (8) instead of the relevant date applicable to Channel 4. (The concept of “the relevant date”, which plays a role in section 303 of the Act, is defined by section 305.)
- (8) The relevant date is—
- (a) in the case of BBC One and BBC Two, 1st January 1997; and

- (b) in any other case, the date (whether before or after the making of this Agreement) when the provision of the service began or begins.
- (9) The parties must agree whether a service is to be treated for the purpose of paragraph (8)(b) as a continuation of a service previously provided by the BBC rather than as a new service.
- (10) Before agreeing anything for the purposes of this clause, the parties must consult such persons appearing to them to represent the interests of persons falling within section 303(1)(a)(i), (ii) or (iii) of the Act as they think fit.
- (11) The BBC must publish anything agreed for the purposes of this clause in such manner as it considers appropriate, having regard to the need to make what has been agreed accessible to—
 - (a) persons who are deaf or hard of hearing, and
 - (b) persons who are blind or partially sighted.
- (12) This clause must be interpreted in accordance with, and have effect subject to, clause 92, which explains such things as “agreed” and “the parties”, and how the process of reaching agreement should work.
- (13) In this clause, references to the Code and to section 303 of the Act must be interpreted having regard to clause 60.

60. Power to modify targets for the purposes of clause 59

- (1) Section 306 of the Communications Act 2003 (referred to in this clause as “the Act”) creates a framework within which the Secretary of State may make orders modifying section 303 of the Act in certain ways. No such order shall have any effect for the purposes of clause 59, nor shall any revision by Ofcom of the Code maintained by them under section 303 have an effect for those purposes to any extent that the revision merely gives effect to such an order.
- (2) Instead, this clause sets out a mechanism by which the Secretary of State may give a direction specifically for the purposes of clause 59.
- (3) A direction under this clause may provide for the Code which the BBC is required to observe by clause 59 to have effect for the purposes of that clause as if it were subject to the modifications specified in the direction.
- (4) The modifications that may be specified in a direction under this clause are any which correspond to any modification of section 303 of the Act which is capable of being made by order under section 306 of the Act.
- (5) A direction under this clause may—
 - (a) make different provision for different services;
 - (b) include savings for the obligations previously having effect for the purposes of clause 59; and
 - (c) make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit.

- (6) Before giving a direction under this clause the Secretary of State must consult the BBC and Ofcom.
- (7) The Secretary of State must notify the BBC and Ofcom of any direction given under this clause.

61. Code relating to programme commissioning

- (1) It shall be the duty of the Trust to require the Executive Board to 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, agreeing terms for the commissioning of 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 clause.
- (3) The code in force under this clause shall 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) The Trust must also secure that the drawing up or revision of a code by virtue of this clause is in accordance with guidance issued by Ofcom as to—
 - (a) the times when the code is to be drawn up or reviewed with a view to revision;
 - (b) the consultation to be undertaken before a code is drawn up or revised;
 - (c) the publication of every code or revised code.

- (5) A code or a revision of such a code shall have effect for the purposes of this clause only if agreed.
- (6) In this clause, “agreed” means agreed in accordance with clause 92.
- (7) Ofcom—
 - (a) must issue and may revise guidance for the purposes of this clause;
 - (b) must ensure that there is always guidance for those purposes in force;
 - (c) must, before issuing their guidance or revised 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 or revised guidance in such manner as they think appropriate.
- (8) Guidance issued by Ofcom for the purposes of this clause must be general guidance and must not specify particular terms to be included in agreements to which the guidance relates.
- (9) For the purposes of this clause—

“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.

62. Retention and production of recordings

- (1) The BBC must—
 - (a) in respect of every programme included in any of the UK Public Broadcasting Services, retain a recording of the programme in an agreed form, and for an agreed period;
 - (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 Broadcasting Services.
- (2) Any period agreed for the purposes of paragraph (1) must—
 - (a) in the case of a UK Public Television Service, be a period which does not exceed 90 days; and
 - (b) in the case of a radio service, be a period which does not exceed 42 days.
- (3) In this clause, “agreed” means agreed in accordance with clause 92.

63. International obligations

- (1) The BBC must comply with requirements notified to it from time to time by Ofcom under this clause.
- (2) The requirements to be notified by Ofcom under this clause 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 Broadcasting 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 clause.
- (4) Before notifying any requirement to the BBC under this clause, Ofcom must give the BBC a reasonable opportunity of making representations to them about that requirement.

THE WORLD SERVICE

64. Provision of the World Service

- (1) The BBC must provide the World Service.
- (2) The World Service involves the broadcast or other distribution of programmes, and the delivery of other services, aimed primarily at users outside the UK.
- (3) The World Service must be provided—
 - (a) to such users outside the UK, and in such languages, as are approved by the Foreign Secretary; and
 - (b) in accordance with any objectives, priorities and targets agreed with her.
- (4) The BBC must consult and co-operate with the Foreign Secretary and obtain from her such information regarding—
 - (a) international developments,
 - (b) conditions in countries outside the UK, and
 - (c) the policies of Her Majesty's Government in its international relations,as the BBC needs to help it plan and prepare the provision of the World Service in the public interest.
- (5) The BBC must ensure that the World Service maintains high standards of editorial integrity and programme content and quality, having regard, to the extent that the Trust considers them relevant to the circumstances of the World Service, to the particular requirements that apply to the UK Public Services.
- (6) The BBC must agree with the Foreign Secretary, and publish, general long-term objectives for the World Service, including—
 - (a) the provision of an accurate, unbiased and independent news service covering international and national developments;

- (b) the presentation of a balanced British view of those developments; and
 - (c) the accurate and effective representation of British life, institutions and achievements.
- (7) The BBC must report in reasonable detail on the performance of the World Service, both in its annual report (see article 45 of the Charter) and elsewhere as appropriate. In particular, the BBC must publish (in a manner agreed with the Foreign Secretary) an account of how the World Service is achieving its agreed objectives, priorities and targets.
- (8) The BBC may arrange for the re-transmission of selected World Service output in the UK.

FAIR TRADING AND COMPETITIVE IMPACT

65. Fair trading statements of policy

- (1) The Trust must consult publicly before adopting a statement of policy on fair trading. (The obligation to adopt such a statement is imposed by article 24(2)(k) of the Charter.)
- (2) The policy shall apply to all trading activities which the BBC or its subsidiaries engage in, whether or not in connection with its commercial services.
- (3) Whenever the Trust adopts a statement of policy, it must publish it.
- (4) The Trust must keep its statement of policy under review and conduct a comprehensive review, which must include public consultation, at least every three years.
- (5) The statement of policy must distinguish (where possible) between those matters which (in its view) are the BBC's legal requirements and those which are not.

66. Competitive impact

- (1) The Trust must adopt and publish a statement of its policy on the competitive impact of the BBC's activities on the wider market. (Article 23(e) of the Charter imposes a duty on the Trust to have regard to such impact.) It is a matter for the Trust to determine how detailed it is appropriate for this statement to be (having regard to clause 67).
- (2) The Trust must adopt and publish codes dealing with those aspects of the operation of the UK Public Services that in its view could raise significant issues regarding the competitive impact of the BBC's activities.
- (3) In formulating its codes the Trust must have regard—
 - (a) to the extent that the Trust considers them to be relevant, to any fair and effective competition codes issued by Ofcom for the purpose of applying to any description of broadcasters other than the BBC; and
 - (b) to any views expressed by Ofcom as to matters that should be covered by the Trust's codes.
- (4) The Trust's codes may deal with matters which are not covered by any fair and effective competition codes issued by Ofcom (and, of course, the duty to "have regard" to any Ofcom codes does not mean that the Trust necessarily have to follow suit even where such codes are relevant).

- (5) The Trust must consult publicly on draft codes.
- (6) The Trust must keep its codes under review and conduct a comprehensive review, which must include public consultation, of each of them at least every three years.

67. Fair trading and competitive impact guidelines

- (1) The Executive Board must adopt and publish guidelines on—
 - (a) the practical implications of the Trust’s statement of policy on fair trading (see clause 65) so far as they relate to the functions of the Executive Board and relevant BBC subsidiaries; and
 - (b) the application of any statement of the Trust’s policy on competitive impact and its competitive impact codes (see clause 66).
- (2) The Executive Board may only adopt guidelines of which a draft has been approved by the Trust.

THE BBC’S COMMERCIAL SERVICES

68. Commercial services to be organisationally separate from the “core” BBC

- (1) The BBC as a corporation shall not directly provide any commercial services, but it may carry out other trading activities.
- (2) Any commercial services must be provided through one or more commercial subsidiaries.

69. The criteria for commercial services etc.

- (1) Subject to paragraph (2), all of the BBC’s commercial services must meet all the following criteria—
 - (a) they must fit with the BBC’s Public Purpose activities (in the manner defined by paragraph (3));
 - (b) they must exhibit commercial efficiency;
 - (c) they must not jeopardise the good reputation of the BBC or the value of the BBC brand;
 - (d) they must comply with fair trading guidelines in force under clause 67(1)(a) and in particular avoid distorting the market.
- (2) Where the commercial service 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 (see the definition of “commercial service” in clause 101 below), the BBC must use its best endeavours to ensure—
 - (a) that the participation complies with paragraph (1) and
 - (b) that any services provided, or activities undertaken, by way of or through the venture or partnership meet the criteria set out in sub-paragraphs (1)(a) to (d).

- (3) A commercial service is to be considered to fit with the BBC's Public Purpose activities if—
 - (a) it is appropriate to be carried on in association with the promotion of the Public Purposes (albeit through the separate framework required by clause 68); and
 - (b) it is connected, otherwise than merely in financial terms, with the ways in which the BBC promotes its Public Purposes.
- (4) A commercial service does not cease to be considered to fit with the BBC's Public Purposes just because the service includes activities which in themselves do not meet the requirements of paragraph (3), provided such activities are peripheral, subordinate or ancillary to other activities that do meet those requirements.
- (5) The application of these criteria is a matter of judgment for the Trust. The Trust must hold the BBC's Executive Board to account for ensuring that the BBC's commercial services are operated in a way which complies with these criteria.

70. Application of clause 69 to some other activities

- (1) This clause applies to activities which are not commercial services but which would be commercial services if clause 101(2) were disregarded.
- (2) Such activities must comply with the principles set out in clause 69 where relevant and bearing in mind that the practical implications of those principles may properly differ when applied to such activities.

71. Approval of commercial services

- (1) The Trust must include within its Protocols rules relating to the approval of changes in the BBC's commercial services (including changes to the structure of the BBC's commercial arm).
- (2) The rules must make it clear when such changes must be referred to the Trust for prior approval, but must in this respect in particular be in keeping with the general nature of the relationship between the Trust and the Executive Board described in the Charter.
- (3) The rules must also make it clear how the Trust will take any approval decisions which are referred to it. This includes the procedures it will follow and any criteria it will apply over and above those set out in clause 69, or the factors to which it will have regard, in deciding whether to give approval.
- (4) The application of these rules is a matter of judgment for the Trust. The Trust must hold the Executive Board to account for ensuring that the BBC's commercial services are operated in a way which complies with these rules.

72. The BBC's commercial strategy

The BBC's commercial strategy must be adopted by the Executive Board and approved by the Trust.

73. Role of the Executive Board

- (1) The Executive Board is responsible for overseeing the activities of the BBC's commercial arm and, subject to the powers of the Trust, for exercising the BBC's functions in relation to the subsidiaries which comprise the commercial arm.

- (2) In particular, the Executive Board must approve particular budgets and targets to an extent and in a manner it considers appropriate, subject to the commercial strategy approved by the Trust and to any other powers of the Trust.
- (3) The Executive Board must ensure that the business and affairs of the BBC's commercial arm are carried on in a way which is compatible with the requirements of—
 - (a) the Charter, this or any other Framework Agreement, and the general law; and
 - (b) high standards of financial management and control (including risk management).

74. Reports and accounts about the commercial services

- (1) The Executive Board must, each year, secure the publication of a report and accounts relating to the BBC's commercial services.
- (2) The report and accounts must—
 - (a) be detailed;
 - (b) contain a clear description of the services and activities comprised within the BBC's commercial services;
 - (c) address compliance with the criteria set out in clause 69;
 - (d) include information broken down for different types of business; and
 - (e) comply, where relevant, with best practice relating to accounts of publicly-quoted companies.

THE FUNDING OF THE BBC

75. Licence fee funding and grants from Government Departments

- (1) The Secretary of State shall 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 the World Service, any Commercial Service, any service of a description mentioned in paragraph (7), or any 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)(a), the activity, if carried on, of making the World Service available to users within the UK is not to be regarded as an activity carried on for the purposes of the World Service.

- (4) For the purposes of paragraph (2)(b)—
- (a) whether an activity is carried on for the purposes of the same service as that which is funded in any of the ways described in that paragraph depends on whether they are within the scope of the same 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.
- (5) In paragraph (2)(b), the reference to “any other alternative means of finance” does not include the use of funds derived—
- (a) from the operation of the commercial services;
 - (b) from the Open University;
 - (c) from 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;
 - (d) from co-funding by non-commercial bodies for output in minority languages and other limited circumstances, but only where compatible with a statement of policy approved for the purposes of this paragraph by the Trust and the Secretary of State;
 - (e) from competition prizes and other awards made available or funded by any one or more third parties under the terms of a framework approved by the Trust;
 - (f) 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 approved for the purposes of this paragraph by the Trust and the Secretary of State.
- (6) For the purposes of the World Service, the Foreign Secretary shall, in each year, pay to the BBC out of money provided by Parliament such sums as the Treasury may authorise.
- (7) Where the BBC performs any other services at the request of any Department of Her Majesty’s Government in the United Kingdom (save for under clause 81) the Minister in charge of the Government Department concerned shall pay to the BBC such sums as the Treasury may authorise for those purposes.
- (8) Sums payable to the BBC under paragraph (1), (6) or (7) of this clause shall be paid in instalments and at intervals determined by the appropriate Secretary of State 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 (6) or (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 shall 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 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 76.

76. Subscription services and sponsored material

- (1) The BBC shall not, without the prior approval of the appropriate Minister—

- (a) include any sponsored material in any of its services; or
- (b) provide any subscription service.

- (2) 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 whose relevant costs are met in whole or in part by an organisation or person other than the BBC, the Open University, or performers featured in the material, with a view to promoting, through the material’s inclusion in a service, its name, its trade mark, its image, its activities or its products or other direct or indirect commercial interests; and

“subscription service” means a television, radio or online 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.

77. Duty of the Trust to keep the BBC’s financial needs under review

As an aspect of the Trust’s general duty under article 23(d) of the Charter to exercise rigorous stewardship of public money, the Trust must keep under review the financial needs of the BBC for the purpose of ensuring, through the exercise of the Trust’s own functions, that the Executive Board are not authorised to spend, overall, more public money than is needed for the appropriate discharge of the Board’s functions.

78. Compensation for free television licences

- (1) This clause applies in any year 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 for Work and Pensions shall pay to the BBC out of money provided by Parliament such sum or sums as the Treasury may authorise, being—
 - (a) such sum or sums as that 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
 - (b) 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.
- (3) Any account certified by a member of the Senior Civil Service in the Department for Work and Pensions 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 for Work and Pensions with the consent of the Treasury or by Parliament.

79. Value for money examinations

- (1) The Trust must examine the value for money achieved by the BBC in using the sums paid to it under clause 75(1).
- (2) For that purpose, the Trust must regularly—
 - (a) discuss with the Comptroller and Auditor General the possible scope of its audit programme and which individual reviews within that programme would be particularly suited to the National Audit Office;
 - (b) take all reasonable steps to—
 - (i) agree with the Comptroller and Auditor General the information needed to conduct such a discussion and how it is to be accessed, and
 - (ii) ensure that he has such access to it;
 - (c) having regard to the discussion provided for at sub-paragraph (a), decide upon an audit programme which includes in particular the activities of the BBC which will be subject to individual reviews in the course of the programme.

- (3) Following its decision upon an audit programme under paragraph (2)(c), the Trust must—
- (a) enter into suitable arrangements, including those with—
 - (i) the National Audit Office, on terms which require the factual content of any report to be submitted under sub-paragraph (b) to be agreed by the BBC before submission but allow the National Audit Office to retain full discretion over the report’s conclusions and recommendations, and
 - (ii) other suitable organisations,
- to carry out individual reviews in accordance with the audit programme, for such period or periods as the Trust determines;
- (b) ensure that any arrangements entered into under sub-paragraph (a) require an organisation, on completion of a review, to report exclusively to the Trust on that review;
 - (c) consider any report submitted under sub-paragraph (b) and the extent to which it contains in the Trust’s view anything which ought to be taken into account in examining value for money for the purposes of paragraph (1);
 - (d) decide what action the Trust should take in the light of any such report, which may include requiring the Executive Board to set out how it intends to respond to—
 - (i) any aspect of the report, or
 - (ii) the conclusions of those aspects of the Trust’s examination which took the report into account,
- so far as they are relevant to the functions of the Executive Board.

- (4) The Trust shall, as soon as practicable, transmit any report submitted to it under sub-paragraph (3)(b) (whether by the National Audit Office or by any other organisation), together with any written response to that report that it considers appropriate, to the Secretary of State. The Secretary of State must then lay the report, together with the Trust’s response (if any) before Parliament.
- (5) For the purposes of this clause “the Comptroller and Auditor General” means the officer appointed under section 6 of the Exchequer and Audit Departments Act 1866.

80. 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 (but subject to paragraph (8)).
- (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;(but subject to paragraph (8)).

- (3) As an additional requirement, the net cost of interest on the borrowings of the commercial arm must not at any time exceed one third of the commercial arm's EBITDA.
- (4) Compliance with the requirements of paragraphs (2) and (3) is to be tested at least annually at the end of the accounting period used for the purposes of clause 74.
- (5) Compliance with the requirements of paragraphs (1), (2) and (3) is to be determined by reference to UK Generally Accepted Accounting Principles.
- (6) After the Secretary of State has for the first time specified a sum ("the initial sum") for the purposes of paragraph (1) or (2) she may, by further directions, from time to time change the sum for the time being specified there, but may never reduce it to a sum smaller than the initial sum (although this does not affect the kinds of amendment that she may make under paragraph (7)(b)).
- (7) The Secretary of State may also, by directions-
 - (a) impose separate requirements (including separate borrowing limits) on the BBC or its commercial arm for capital and current expenditure, as defined in the direction; and
 - (b) alter or add to the requirements on the BBC's commercial arm set out in paragraphs (2) to (4), which includes power to alter or add to definitions which apply to the interpretation of those paragraphs;

but a direction whose only effect is to impose separate borrowing limits for capital and current expenditure in place of a single limit must impose limits that together are equal to or exceed the size of the single limit in force immediately before the direction takes effect.
- (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 schedule of repayments agreed under paragraph (9)(a)).
- (9) The BBC must make proper provision-
 - (a) for repaying its borrowings according to a schedule of repayments (if any) agreed with the Secretary of State with the consent of the Treasury; and
 - (b) for replacing or renewing any property of the BBC.
- (10) The BBC must not borrow, or raise or secure the payment of money, upon any property, interests or rights held by the BBC exclusively for the purposes of the World Service; but nothing in this paragraph is to be taken to prevent the BBC or any subsidiary of the BBC which is engaged in providing a service forming part of the World Service from borrowing, or raising or securing the payment of money, upon any property, interests or rights which that subsidiary holds.
- (11) The BBC must not guarantee or underwrite any liabilities of its commercial arm.
- (12) References in this clause to "the BBC" include a reference to any subsidiary of the BBC that is not part of the commercial arm, except that in paragraph (1) it does not include any subsidiary that is engaged in providing a service forming part of the World Service.

(13) Any power of the Secretary of State to give a direction under this clause is exercisable only with the consent of the Treasury.

(14) In this clause—

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

- (a) cash balances;
- (b) investments in money market funds,
- (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 less Cash Balances and Short Term Investments held;

“EBITDA” means earnings before interest, tax, depreciation and amortisation, adjusted to exclude any exceptional or other charges in respect of a business disposal by, or corporate restructuring within, the commercial arm;

“Indebtedness for Borrowed Money” means any indebtedness, excluding inter-company liabilities 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) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with UK Generally Accepted Accounting Principles as at the date hereof in the relevant jurisdiction, be treated as a finance or capital lease; and
- (e) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (d) above.

SOME GENERAL OBLIGATIONS OF THE BBC

81. Defence and Emergency Arrangements

(1) Any 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 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,
 - (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.

82. Investigation of electro-magnetic interference

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

83. Equal opportunities

- (1) The Executive Board must make arrangements for promoting, in relation to the persons mentioned in paragraph (2), equality of opportunity—
 - (a) between men and women, and
 - (b) between people of different racial groups.
- (2) The persons referred to in paragraph (1) are persons employed in connection with providing any of the UK Public Services or making programmes for inclusion in any of those Services.
- (3) The Executive Board shall also make arrangements for promoting, in relation to those persons, the equalisation of opportunities for disabled persons.
- (4) The Secretary of State may, by a direction to the BBC, amend paragraph (1) by adding any other form of equality of opportunity that the Secretary of State considers appropriate.
- (5) In this clause—

“disabled” has the same meaning as in the Disability Discrimination Act 1995, and

“racial group” has the same meaning as in the Race Relations Act 1976 (or, in relation to persons employed in Northern Ireland, the Race Relations (Northern Ireland) Order 1997).

84. Training

- (1) The Executive Board 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 promotion of the BBC's Public Purposes, and in particular that of stimulating creativity and cultural excellence;
 - (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 Executive Board shall 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.

85. General provisions about arrangements made under clauses 83 and 84

- (1) The Executive Board must—
 - (a) take appropriate steps to make those affected by arrangements made under clauses 83 and 84 aware of them;
 - (b) review those arrangements; and
 - (c) (at least once each year) make a report to the Trust on the current operation and effectiveness of the arrangements.
- (2) After the Trust has received such a report from the Executive Board, it must publish its observations on the current operation and effectiveness of the arrangements.

86. Archives

- (1) The Executive Board 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 Executive Board thinks fit).
- (3) In making those arrangements, the Executive Board must consult such designated bodies as are engaged in maintaining sound, television and film archives as it considers appropriate.

- (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 designated 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.
- (6) In this clause, "designated body" means a body that is designated by order of the Secretary of State for Trade and Industry under section 75 of the Copyright, Designs and Patents Act 1988.

87. Research

- (1) The Executive Board must ensure that the BBC conducts research and development activities geared to the promotion of the BBC's Public Purposes and which aim to maintain the BBC's position as a centre of excellence for research and development in broadcasting and other means for the electronic distribution of audio, visual and audiovisual material, and in related technologies.
- (2) In carrying out its function under paragraph (1), the Executive Board must pay particular attention to the desirability of supporting actively in national and international forums the development of "open standards" (that is to say, technologies where opportunities to participate in their creation and to use them are made widely available, free of charge or on terms that must be fair, reasonable and non-discriminatory).
- (3) These activities should be conducted both within the BBC and 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 Executive Board must keep the BBC's 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 licence fee payers and the UK economy by making new developments widely and openly available.

88. Monitoring activities

- (1) A Government Minister may direct the BBC to monitor and (where applicable) record specified media output, and to supply other services in that connection (including, for example, the preparation and distribution of products such as monitoring reports and digests of broadcast or other material).
- (2) In paragraph (1), the reference to media output is a reference to any sound, text, data, still or moving pictures or other content carried by means of an electronic communications network or an electronic communications service (within the meaning of the Communications Act 2003), and in any print medium, and includes the output of any news agency; and "specified" means specified in a direction under that paragraph.
- (3) In complying with such a direction, the BBC is to be regarded as an agent of the Crown, and to be acting in the public interest.

COMPLAINTS

89. Setting the framework and procedure for handling complaints

- (1) The Trust must set and publish one or more frameworks within which the BBC and the commercial arm must handle complaints, and the procedures that are to apply to complaints.
- (2) In particular, the Trust must establish and maintain procedures for the handling and resolution of complaints about standards in the content of the BBC's services, including complaints concerning the subject-matter of clauses 43 to 46 (BBC guidelines designed to secure appropriate standards; accuracy and impartiality; Ofcom's Fairness Code; and Relevant Programme Code Standards).
- (3) The Trust must consult publicly on any framework and its associated procedures before setting them.
- (4) Every framework and its associated procedures—
 - (a) must reflect the principles set out in clause 90;
 - (b) must ensure that all appeals that raise matters of substance are subject to a right of appeal to the Trust, and that the Trust is the final arbiter if any question arises as to whether an appeal is for the Trust to determine or not; and
 - (c) may make different provision for different complaints or classes of complaint.

90. Some overriding principles that must be respected in relation to complaints

- (1) There must be a clear division of responsibilities between the Trust and the Executive Board.
- (2) The Trust must ensure that, so far as practicable, the published framework and procedures place a complainant on an equal footing with the BBC, the Trust, the Executive Board or the commercial arm (as the case may require).
- (3) The Trust should not have a role in handling or determining individual complaints in the first instance, except where the complaint relates to any act or omission of the Trust itself or of the Trust Unit.
- (4) The published framework and procedures must give detailed information on how complainants can expect to be treated (including, for example, in terms of timescales).
- (5) The published framework and procedures must provide for complainants and prospective complainants to be given, ad hoc, clear guidance explaining—
 - (a) how the complaints system (including appeals) works; and
 - (b) where relevant, the availability of other methods by which redress might be pursued in relation to the type of issues raised by the complainant or prospective complainant.
- (6) Whenever the Trust determines a complaint or an appeal, adequate reasons must be given.

- (7) The Trust must also ensure, in relation to any fair trading complaint, that—
- (a) any advice provided to the Trust (including any legal advice) is provided by advisers who are separate from, and independent of, any advisers providing advice in relation to that complaint to the Executive Board or the commercial arm; and
 - (b) the published framework and procedures make clear what sanctions and other remedies the Trust has power to apply.
- (8) It is the duty of the Trust to ensure that, where any person who provides information to the Trust in connection with a fair trading complaint stipulates that the information must not come into the possession of—
- (a) any member of the Executive Board, or
 - (b) any member of the BBC’s staff, other than a member of staff of the Trust Unit,
- the BBC always has in place arrangements to secure that neither the Trust nor any member of staff of the Trust Unit discloses that information in circumstances that lead to a breach of that stipulation (which might, for example, be the case where the Trust Unit makes the information public, or discloses it to a third party who then discloses it to the Executive Board).
- (9) The obligation in paragraph (8)—
- (a) applies whether or not the information in question would be regarded, in law, as confidential;
 - (b) does not affect any other obligation of the Trust to keep information confidential;
 - (c) is subject to any legal obligation of the BBC or any member of its staff to disclose information (such as under a court order or the Freedom of Information Act 2000).
- (10) In this clause, “fair trading complaint” means any complaint if, and to the extent that, it alleges that the BBC has failed to comply with any obligation imposed on it by clauses 65, 66 and 67 (fair trading and competitive impact).

THE BBC AND OFCOM

91. Co-operation with Ofcom

The BBC must co-operate with Ofcom, and provide them with such information and other assistance as they may reasonably require from the BBC, in connection with any function of Ofcom’s under section 198 of the Communications Act 2003 (functions of Ofcom in relation to the BBC).

92. Agreements between the BBC and Ofcom

- (1) This clause applies to the interpretation of the following provisions of this Agreement (which are referred to below as “the relevant provisions”)—
- (a) clause 47;

- (b) clause 49;
 - (c) clause 50;
 - (d) clause 51;
 - (e) clause 52;
 - (f) clause 59;
 - (g) clause 61; and
 - (h) clause 62.
- (2) In those provisions—
- “agreed” means agreed between the BBC and Ofcom; and
- “the parties” means Ofcom and, subject to the obligations imposed upon it by paragraph (3), the BBC.
- (3) The BBC shall do all it can to secure and maintain the agreement of Ofcom to anything which is, for any purposes of the relevant provisions, to be agreed, and shall for the purpose of securing or maintaining such agreement—
- (a) make proposals to Ofcom; and
 - (b) liaise with Ofcom to such extent as may be necessary to secure or maintain such agreement.

93. Power of Ofcom to require remedial action

- (1) If Ofcom are satisfied—
- (a) that the BBC has, in relation to any of its services, contravened a Relevant Enforceable Requirement, and
 - (b) that the contravention can be appropriately remedied by the inclusion in that service of a correction or a statement of findings (or both),
- Ofcom may direct the BBC to include a correction or statement of findings (or both) in the service.
- (2) A direction may require the correction or statement of findings to be in such form, and to be included in programmes at such times, as Ofcom may determine.
- (3) Ofcom are not to give the BBC a direction under this clause unless they have given it a reasonable opportunity of making representations to them about the matters appearing to them to provide grounds for the giving of the direction.
- (4) Where the BBC includes a correction or a statement of findings in a service in pursuance of a direction under this clause, it may announce that it is doing so in pursuance of such a direction.

- (5) If Ofcom are satisfied that the inclusion of a programme in a service involved a contravention of a Relevant Enforceable Requirement, they may direct the BBC not to include that programme in that service on any future occasion.
- (6) Where Ofcom—
 - (a) give a direction to the BBC under paragraph (1), or
 - (b) receive representations from it by virtue of paragraph (3),they shall send a copy of the notice or representations to the Secretary of State.
- (7) “Relevant Enforceable Requirement” is defined by clause 95.

94. Power of Ofcom to fine the BBC

- (1) If Ofcom are satisfied that the BBC has contravened a Relevant Enforceable Requirement, they may serve on the BBC a notice requiring it to pay them, within a specified period, a specified penalty.
- (2) The amount of the penalty that may be imposed on any occasion under this clause shall not exceed the maximum specified in section 198(5) of the Communications Act 2003.
- (3) Ofcom are not to serve a notice on the Corporation under paragraph (1) unless they have given it a reasonable opportunity of making representations to them about the matters appearing to them to provide grounds for the service of the notice.
- (4) Where Ofcom—
 - (a) serve a notice on the BBC under paragraph (1), or
 - (b) receive representations from it by virtue of paragraph (3),they shall send a copy of the notice or representations to the Secretary of State.
- (5) An exercise by Ofcom of their powers under paragraph (1) does not preclude any exercise by them of their powers under clause 93 in respect of the same contravention.
- (6) “Relevant Enforceable Requirement” is defined by clause 95.

95. Relevant Enforceable Requirements

- (1) For the purposes of clauses 93 and 94, the Relevant Enforceable Requirements are all requirements imposed on the BBC by or under the following—
 - (a) clause 45 (the Fairness Code);
 - (b) clause 46 (Programme Code Standards);
 - (c) clause 47 (news and current affairs);
 - (d) clause 49 (programming quotas for original productions);
 - (e) clause 50 (programming for the nations and regions);
 - (f) clause 51 (programme-making in the nations and regions);

- (g) clause 52 (quotas for independent productions);
 - (h) clause 59 (code relating to provision for the deaf and visually impaired);
 - (i) clause 60 (power to modify targets for the purposes of clause 59);
 - (j) clause 61 (code relating to programme commissioning);
 - (k) clause 62 (retention and production of recordings);
 - (l) clause 63 (international obligations);
 - (m) clause 91 (co-operation with Ofcom);
 - (n) paragraph 1 of Schedule 12 to the Communications Act 2003 (quotas for independent productions);
 - (o) paragraph 2 of Schedule 12 to the Communications Act 2003 (duty to publicise complaints procedures etc.).
- (2) In addition, for the purposes of clause 94 only, the Relevant Enforceable Requirements include all requirements imposed on the BBC by direction under clause 93 (power of Ofcom to require remedial action).

SOME GENERAL MATTERS

96. 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 Government Minister—
- (a) any approval must be given in writing; and
 - (b) any approval may be revoked or varied (in which case paragraph (a) applies as it applied to the giving of the original approval).
- (2) Where, under or by virtue of this Agreement, any 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).

97. 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.

98. 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 52 of the Charter).

INTERPRETATION

99. 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.

100. Meaning of “the UK Public Services”

In this Agreement, “the UK Public Services” means all the services provided by the BBC for the purpose of promoting its Public Purposes, except any which—

- (a) are commercial services (defined by clause 101),
- (b) form part of the World Service (for which see clause 64),
- (c) fall within clause 75(7) (services provided at the request of, and funded by, Government Departments), or
- (d) are aimed primarily at users outside the UK.

101. Meaning of “commercial services” and related expressions

- (1) In this Agreement, “commercial services” means services which are provided, or other activities which are undertaken, not primarily (or at all) in order to promote the BBC’s Public Purposes, but with a view to generating a profit (regardless of whether the profit, once generated, will or may be used to fund the promotion of the Public Purposes). This means that something can be a commercial service even if it also promotes the Public Purposes, if it is done with a view to generating profit rather than in order to achieve that promotion.
- (2) However, “commercial services” do not include the following—
- (a) the selling of assets or of excess capacity in the BBC’s resources held for use by the BBC’s Public Services;
 - (b) the provision of facilities and services which are ancillary to the provision of the BBC’s 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 BBC’s Public Services;
 - (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 paragraph (1), "services" and "activities" include services and activities which are carried out by subsidiaries of the BBC, and "activities" also includes participating 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) In paragraph (2), "the BBC's Public Services" means all or any of the services provided by the BBC for the purpose of promoting its Public Purposes except any which are themselves commercial services.

- (5) In this Agreement—

"the BBC's commercial arm" means all subsidiaries of the BBC which play a role in the provision of the BBC's commercial services (see clause 68); and

"the BBC's commercial services" means commercial services provided through the means described in clause 68(2).

102. The meaning of "licence fee payer"

In this Agreement, a reference to a "licence fee payer" is not to be taken literally but includes, not only a person to whom a TV licence is issued under section 364 of the Communications Act 2003, but also (so far as is sensible in the context) any other person in the UK who watches, listens to or uses any BBC service, or may do so or wish to do so in the future.

103. The meaning of obligations for the Trust to consult publicly

- (1) This clause explains what is meant where this Agreement expressly imposes an obligation on the Trust to consult publicly (however expressed, for example clause 28(3)(b)).
- (2) The Trust must do so in ways which are appropriate to the subject matter of the consultation and to the issues which the Trust considers to be raised by its proposals.
- (3) The Trust must consider the extent to which, in the circumstances, it should specifically request an input from particular persons, classes of persons or groups.
- (4) In particular, the Trust must consider who is likely to be affected by the subject matter of the consultation and how best to ascertain their views.
- (5) The Trust must consider whether, in relation to matters relevant to the subject matter of the consultation, it should—
 - (a) undertake research of its own,
 - (b) obtain an expert or professional input, with or without payment.

- (6) The Trust must publish at least an analysis of all inputs received in connection with the public consultation.
- (7) The Trust must give reasons for all decisions which have been subject to a requirement to consult publicly.
- (8) In addition, the nuance of how any particular public consultation obligation is expressed must be taken into account (for example, clause 5(5)).
- (9) In any particular context, the fact that an obligation to consult publicly has not been imposed expressly should not be assumed to imply that no such consultation will ever occur, merely that it is a matter for the judgment of the Trust whether public consultation is appropriate in the circumstances (having regard, of course, to the Trust's general duty under article 23(c) of the Charter to assess carefully and appropriately the views of licence fee payers).

104. Some simple definitions in alphabetical order

In this Agreement—

“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” is defined by clause 101(5);

“the BBC's commercial services” is defined by clause 101(5);

“broadcast” means broadcast by wireless telegraphy;

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

“commercial services” is defined by clause 101(1) to (3);

“distribute”, in relation to a service, does not include broadcast (and related expressions such as “distribution” shall be interpreted according to this definition);

“Digital Switchover” is defined by clause 34(1);

“the Executive Board” means the Executive Board of the BBC established by article 7 of the Charter;

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

“functions” includes both powers and duties;

“independent productions”, in relation to a UK Public Television Service, has the meaning which it has in relation to that service for the purposes of paragraph 1 of Schedule 12 to the Communications Act 2003;

“Joint Steering Group” means the Group established under clause 29;

“licence fee payer” is defined by clause 102;

“market impact assessment” means the component of a Public Value Test which is described in clause 30 and, according to context, can refer either to the process of making the assessment or a document in which the substantive findings of the assessment are set out;

“Ofcom” means the Office of Communications;

“Parliament” means the Parliament of the United Kingdom;

“Protocol” means a regulation made by the Trust under article 21 of the Charter;

“Public Purposes” means the purposes set out in article 4 of the Charter;

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

“public value assessment” means the component of the Public Value Test described in clause 28;

“the Public Value Test” is defined by clause 24, and “a Public Value Test” means the process of applying the Public Value Test to particular circumstances;

“purpose remits” means the purpose remits mentioned in article 24(2)(a) of the Charter;

“S4C” means the authority whose name is, by virtue of section 55(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;

“service” includes any activity which is, or ought to be, covered by a service licence (see the criteria at clause 18);

“service licences” means any of the service licences mentioned in article 24(2)(c) of the Charter;

“subsidiary” means a company over which the BBC has “control” as defined in section 840 of the Income and Corporation Taxes Act 1988;

“the Trust” means the BBC Trust established by article 7 of the Charter;

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

“the UK Public Services” is defined by clause 100, and “UK Public 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;

“wireless telegraphy” has the same meaning as in the Wireless Telegraphy Act 1949;

“WOCC” means the Window of Creative Competition (see clause 54).

105. Gender and number

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

106. 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.

107. Power to make different provision for different cases

Any power conferred by this Agreement can in principle be used to make different provision for different cases.

108. 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.

109. 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.

110. Headings

Headings 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: TRANSITIONAL PROVISIONS

Introduction

1. In this Schedule—

“the Transitional Period” means the period that begins at the beginning of the day after the day on which the Charter is granted (see the date given in the formal text following article 65 of the Charter) and ends at the end of 31st December 2006;

“the 1996 Agreement” means the agreement made on 25th January 1996 between the Secretary of State and the BBC (as subsequently amended), containing provision relating to the BBC and its services;

“the 1996 Charter” means the Royal Charter for the continuance of the BBC which came into force on 1st May 1996.

Content characteristics

2. Clause 14 does not apply to the content of any BBC service broadcast or otherwise distributed before 1st January 2007.

Purpose remits

3. In relation to any time before the Trust has set a purpose remit in relation to any one or more of the Public Purposes, references to purpose remits in clauses 17(2), 20(2)(b) and 28(2)(b) shall be taken as references to such purpose remits (if any) as have been set at that time.

Initial exercise of any function of drawing up, approving etc. any arrangements.

4. (1) This paragraph applies to any function which—
 - (a) is a function of the Trust or of the Executive Board, or
 - (b) is a function of the Executive Board whose exercise requires the approval of the Trust,

and which consists of the making of rules or arrangements for any purpose under the Charter or this Agreement (for example, setting any strategy, drawing up any code or guidelines, establishing a procedure or imposing any requirement, or approving any such things).
- (2) The Trust or (as the case may be) the Executive Board may, if it considers it appropriate to do so, initially perform any function to which this paragraph applies by adopting for any purpose any rules or arrangements which appear to it—
 - (a) to have, or to have had, effect, during the Transitional Period, for a similar purpose under or by virtue of the 1996 Charter or the 1996 Agreement; or
 - (b) to have been agreed to by the Governors of the BBC with a view to their having effect after the end of that period.
- (3) The power under sub-paragraph (2)—

- (a) includes power to modify the rules or arrangements in question if it appears to the Trust or (as the case may be) the Executive Board necessary or expedient to do so in order to give them full effect under the Charter or this Agreement; but
 - (b) in a case where the function in question could not normally be exercised in relation to any rules or arrangements (or part of any rules or arrangements) without Ofcom's input, the Trust or the Executive Board does not have power to alter their effect without such input.
- (4) The reference in sub-paragraph (3)(b) to Ofcom's input is a reference to any requirement (however expressed), in relation to any rules or arrangements (or part of any rules or arrangements)—
- (a) that Ofcom must be consulted about the rules or arrangements (or part);
 - (b) that Ofcom must approve the rules or arrangements (or part); or
 - (c) that Ofcom and the BBC must reach agreement about the rules or arrangements (or part).
- (5) In a case where a function to which this paragraph applies could not normally be exercised without prior public consultation, the power under sub-paragraph (2) may be exercised without such consultation.
- (6) The power under sub-paragraph (2) may be exercised during or after the Transitional Period.
- (7) Any rules or arrangements having effect by virtue of provision made under this paragraph shall cease to have effect no later than the end of 30 September 2007, unless in any particular case the Trust or, as the case may be, the Executive Board, determines that there are special reasons why the rules or arrangements in question are to continue to have effect until such later date as it may specify.
- (8) Where the Trust or, as the case may be, the Executive Board, determines that any rules or arrangements are to have effect after the end of 30 September 2007, it must publish its reasons for coming to that decision.
- (9) The power in sub-paragraph (2) does not apply to any provision for which specific provision is made in paragraph 5.

Regulatory obligations on the UK Public Services

5. Any measure taken or other thing done by the BBC that is mentioned in the first column of the table below shall have effect for the purposes of this Agreement as if it were a measure taken or other thing done by the Trust or (as the case may be) Executive Board under the corresponding provision of this Agreement mentioned in the second column, subject to any insubstantial modifications necessary to give it effect under this Agreement (such as changing references to the Governors into references to the Trust or the Executive Board).

Measure taken or other thing done under 1996 Agreement	Effect in this Agreement
Arrangements relating to news and current affairs programmes on BBC One and BBC Two determined by the Governors under clause 5D	Requirements imposed on the Executive Board by the Trust under clause 47
Any determination concerning party political broadcasts made by the Governors under clause 5E	A determination by the Trust under clause 48
Any arrangements agreed with Ofcom pursuant to clause 5F relating to programming quotas for original productions in each of the Public Television Services	Agreed arrangements under clause 49
Any arrangements determined by the Governors pursuant to clause 5G relating to regional programmes on BBC One and BBC Two	Arrangements under clause 50
Any arrangements concerning regional programme-making agreed with Ofcom pursuant to clause 5H	Agreed arrangements under clause 51
For the purposes of the Code relating to provision for deaf or visually-impaired persons:	
(a) any agreement with Ofcom, pursuant to clause 5I.3, as to the programmes that are “excluded programmes”	An agreement with Ofcom pursuant to clause 59(4)
(b) any agreement with Ofcom, pursuant to clause 5I.8, as to whether a service provided by the BBC is a continuation of a service so provided	An agreement with Ofcom pursuant to clause 59(9)
A code relating to programme commissioning drawn up by the BBC and agreed with Ofcom under clause 5L	A code drawn up by the Executive Board and agreed with Ofcom under clause 61
Guidance issued by Ofcom for the purposes of the BBC’s code relating to programme commissioning under clause 5L.7	Guidance issued by Ofcom under clause 61(7)
Any international obligation of the United Kingdom notified to the BBC by Ofcom under clause 7A	An international obligation of the United Kingdom so notified under clause 63

6. The Trust must include within its Protocols rules relating to the approval of proposed changes in the BBC’s commercial services (see clause 71) before 1st July 2007; but until it does so any such proposed change must be referred to the Trust for prior approval if any one or more of the following applies–
- (a) it requires any increase in the borrowing limit of the BBC or its commercial arm (see clause 80);
 - (b) the peak cumulative commitment of the subsidiary concerned, or the BBC’s commitment to any joint venture (in terms of net cash), or the value of equity to be held, or the cost of acquiring any shares, exceeds £10 million;

- (c) it raises significantly novel or contentious issues;
 - (d) it would in any other way fall outside the terms of the “umbrella approval” set out in the Secretary of State’s approval relating to BBC Worldwide Limited, dated 23rd February 2001.
7. Clause 4.4 of the 1996 Agreement is to continue to have effect for the purposes of any Annual Report for any period ending on or before the end of 31st December 2006 which the BBC is required by the Charter to prepare.

SCHEDULE 2: AGREEMENTS THAT ARE REVOKED BY THIS AGREEMENT

1. The Agreement Dated the 25th Day of January 1996 between Her Majesty’s Secretary of State for National Heritage¹ and the British Broadcasting Corporation, containing provision relating to the BBC and its services.
2. The Amendment dated 3 July 2000 to the Agreement of 25th Day of January 1996 Between Her Majesty’s Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation.
3. The Amendment dated 4th December 2003 to the Agreement of 25th Day of January 1996 (as amended) Between Her Majesty’s Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation.

¹ The reference to Her Majesty’s Secretary of State for National Heritage is to be taken to be a reference to Her Majesty’s Secretary of State for Culture, Media and Sport by virtue of article 2 of the Secretary of State for Culture, Media and Sport Order 1997 (SI 1997/1744).

THE CORPORATE SEAL OF THE SECRETARY
OF STATE FOR CULTURE, MEDIA AND SPORT
affixed to this deed is authenticated as the corporate
seal of the Secretary of State for Culture, Media
and Sport by—



TESSA JOWELL
(L.S.)

ANDREW RAMSAY
A duly authorised official in the Department for
Culture, Media and Sport

THE CORPORATE SEAL OF THE BRITISH
BROADCASTING CORPORATION is
affixed to this deed.



(L.S.)

MICHAEL GRADE
Chairman

MARK THOMPSON
Director General



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