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BBC's Charter Review

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The Review of the BBC's Royal Charter

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The Select Committee on BBC Charter Review

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The Report of the Committee is published in Volume I (HL Paper 50–I) and the Evidence is published in Volume II (HL Paper 50–II).

SUMMARY

The BBC is the cornerstone of broadcasting in the United Kingdom and is respected across the world. BBC news and current affairs, on television, radio and online are known for their accuracy and impartiality. When the British public were asked to name a trustworthy news source, they chose the BBC five times more often than any of its rivals. Abroad the BBC World Service is seen as the most objective international radio broadcaster in almost every country surveyed. Our aim is to strengthen the BBC while meeting the legitimate claims of the licence fee payer.

The current review of the BBC's Royal Charter, to which our report contributes, provides an opportunity to ensure that the BBC can respond to three contemporary challenges in a way that effectively serves licence fee payers and maintains the Corporation's global reputation. The first of these challenges is to the basis of the BBC's reputation—the accuracy of its reporting and its journalistic and editorial independence. The events leading up to Lord Hutton's inquiry epitomise this challenge. The second challenge is the development of new technologies and the so called "digital revolution". And the third challenge is the increasing emphasis on more rigorous systems of corporate governance and regulation in both the public and private sectors.

In March 2005 the Government published a Green Paper which they entitled "*A strong BBC, independent of government*". We do not believe that the Government have seized this opportunity to secure a strong BBC which is truly independent of Government. The Government intend to continue to establish the BBC by Royal Charter through the Privy Council. The Government support this method because they control it. It is entirely up to the Government of the day to decide what goes into the Royal Charter and the associated Agreement between the BBC and the Secretary of State. We believe that the BBC's mandate and structure should be defined in statute rather than by Royal Charter. The passage of an Act through Parliament is more democratic, more independent and more transparent. It provides for all-party involvement and thus protects the BBC from the pressures exerted by any one political party.

The licence fee is the best way to fund the BBC over the next decade. However, we believe that the system for agreeing the cost of the licence fee should be more transparent and the BBC's bid should be subject to independent investigation. Negotiations on the level of the licence fee should no longer take place behind closed doors with Parliament expected to approve the Government's proposal without knowing its basis. Instead the National Audit Office should provide an independent assessment of the bid. This will insulate the BBC from potential political interference in its finances by providing an objective and non-political assessment.

We do not believe that the BBC should expect automatic licence fee settlements above the rate of inflation. The BBC needs to demonstrate to the licence fee payer that it has taken every sensible action to contain costs and secure maximum value for money. The BBC's current bid is particularly high because the Government expect the BBC to fund a significant proportion of the costs of analogue switch-off. We see no reason why the licence fee payer should fund analogue switch-off. Licence fee payers already face covering the costs of replacing their analogue

television sets and recorders and possibly updating their aerials. In addition the Government are set to benefit financially from analogue switch-off. It is estimated that the benefit to the UK economy will be between £1.1 and £2.2 billion¹. The Government will be in direct receipt of substantial proceeds from any sale of the analogue spectrum. In these circumstances it should be Government and not the licence fee payer who fund switchover.

The Government's Green Paper proposals for reforming the governance and regulation of the BBC are confusing, misguided and unworkable. The proposal that the BBC might have two Chairmen could result in warfare within the Corporation. The proposal to have non-executive members on the Executive Board is ill conceived and will place an unrealistic burden on the non-executives. The Government's failure to commit to a new politically independent system for appointing the Chairman of the BBC yet again highlights the Government's failure to make the BBC truly independent. The Chairman of the BBC should no longer be selected by a panel led by Government officials, according to a job description set by Ministers. There should be a truly independent appointment panel, with a majority of its members drawn from outside politics and the civil service.

What concerns us most about the Government's proposals for the governance and regulation of the BBC is that they do not clearly separate the two functions. In many respects the BBC will remain judge and jury in its own case. We believe a new system of BBC governance and regulation is necessary. The BBC's listeners and viewers, as well as the BBC's competitors, must be able to understand and have confidence in it. It should be designed to serve the licence fee payer. It should secure accuracy in reporting and safeguard the BBC's reputation for quality and independence.

We propose reforms that clarify the three distinct roles of management, governance and regulation and vest them in three separate bodies. For the governance of the BBC we propose a unitary board with a majority of non-executive members and a non-executive Chairman who together are responsible for a wide range of governance functions. The BBC's management should be clearly separated from the governing board. The management committee should be chaired by the Director-General. We recommend that Ofcom should take final responsibility for adjudicating on appeals arising from complaints about all types of BBC content. This would secure clearly independent regulation and clarity for complainants and mean that the Ofcom Content Board would have the same regulatory responsibilities for BBC content as for other terrestrial public service broadcasters. In order to make this possible we suggest that Ofcom's Content Board should be considerably strengthened.

The BBC and the Government have proposed that in future the BBC should not be able to launch new services until their value to the individual and the citizen, as well as their impact of the wider market, have been assessed. We support the introduction of this so called "Public Value Test". However, we believe that it will only be an effective tool if it is applied equally to new services and proposals for significant extensions to existing services. We also believe that it should be possible to appeal the results of the Public Value Test. We recommend reform of the BBC's fair trading commitment to ensure that it is clear and transparent and has the confidence of the wider industry.

¹ In net present value terms

The BBC has an important role to play abroad in providing impartial journalism where it is most needed. However, if the BBC is to continue to act as an international opinion former then the World Service should keep up with changing habits of media consumption and provide a television service. We believe an Arabic language television service is of particular importance.

The BBC has always offered a wide selection of programming and not simply public service programming. The Government propose this should continue and we agree. The BBC should continue to provide a full range of programmes and not be confined to programmes not provided by other broadcasters. In short the BBC should strive to serve all licence fee payers across the whole of the United Kingdom and provide them with high quality programmes and services.

The Review of the BBC Royal Charter

CHAPTER 1: INTRODUCTION

1. The BBC's Royal Charter (the Charter) and the associated Agreement between the BBC and the Secretary of State for Culture Media and Sport set out the rules under which the BBC operates—they are the BBC's constitution. The current Charter was granted on 1 May 1996 and runs to 31 December 2006. The renewal process provides an opportunity to consider the BBC's future and how it serves licence fee payers. The Government, working through the Privy Council, are responsible for drawing up the Charter. Parliament has no formal role (although a debate on the terms of the Agreement is, by convention, held in the House of Commons).
2. The current Charter Review process began in December 2003 when the Government published its first consultation paper. This was followed in March 2005 by a Green Paper "Review of the BBC's Royal Charter. *A strong BBC, independent of government*". Since then an independent panel chaired by Lord Burns, the BBC, the House of Commons Select Committee on Culture, Media and Sport (the House of Commons Committee), and the Office of Communications (Ofcom) have all separately published reports on the future of the BBC (table 1 provides a chronology). A White Paper setting out the Government's proposals is expected to be published by Christmas.
3. We were appointed on 2 March 2005 just before the Government published its Green Paper which put its proposals for the future of the BBC out to consultation. We were established to extend parliamentary scrutiny of the Government's proposals. We have focussed on whether the Government's proposals will secure its expressed aim of "A strong BBC, independent of government". We issued a call for evidence on 9 March 2005. Between March and July we took oral evidence from 33 separate panels of witnesses. We have drawn on earlier consultations and publications as well as the oral and written evidence submitted to us.
4. Our inquiry has been extended. In spring 2006 we will report in more detail on, amongst other things, the role of the BBC in the nations and regions, the BBC World Service and the broadcasting of sport and religion. We intend to take evidence from the Secretary of State on the White Paper in the new year.
5. The membership of the Committee is set out in Appendix 1, and our Call for Evidence in Appendix 3. We received valuable written and oral evidence from the witnesses listed in Appendix 2. In the course of our inquiry we travelled to Germany and while within the United Kingdom we visited BBC Bristol and we took evidence from S4C and BBC Wales in Cardiff. We wish to put on record our warm thanks to all those who have assisted us in our work.
6. Our Specialist Adviser for this inquiry was Professor Richard Collins, Professor of Media Studies at the Open University. We have been extremely fortunate to benefit from his expertise and enthusiasm, which have contributed enormously to our work.

TABLE 1**The process so far**

11 December 2003	The Government published its initial consultation document: "Review of the BBC's Royal Charter". Consultation ran to 31 March 2004.
18 September 2003	Lord Burns was appointed to advise the Secretary of State on the Charter review process.
April 2004	As part of its first statutory quinquennial review of Public Service Broadcasting Ofcom published its first phase review of Public Service Television Broadcasting.
May 2004	Phillip Graf published his independent review, commissioned by the Secretary of State, on BBC online services (the Graf Report).
15 June 2004	The Secretary of State appointed an independent panel to work with Lord Burns (the Lord Burns Panel).
July 2004	The Government published the results of the initial consultation and their quantitative and qualitative research: "What you said about the BBC".
July 2004	The BBC published its own blueprint for reform: "Building Public Value".
July—December 2004	The Lord Burns Panel ran a series of 13 informed seminars on the main issues for Charter Review.
September 2004	Ofcom published its second phase review of Public Service Television Broadcasting: "Meeting the digital challenge".
October 2004	Professor Patrick Barwise and Tim Gardam published their two independent reviews, commissioned by the Secretary of State, on the BBC's new digital television and radio services.
1 December 2004	The Lord Burns Panel published its first report summarising the major themes of the debate so far: "Emerging Themes".
8 December 2004	The House of Commons Committee published a report focusing on the BBC's future scope and remit, funding mechanism and governance and regulation: "A public BBC".
28 January 2005	The Lord Burns Panel published its final advice to the Secretary of State.
8 February 2005	Ofcom published its third phase review of Public Service Television Broadcasting: "Competition for Quality".
2 March 2005	The Government published a Green Paper consultation document: "A strong BBC, independent of government" (the Green Paper). Consultation ran to 31 May 2005.
9 March 2005	House of Lords Select Committee on BBC Charter Review was appointed.
24 May 2005	The BBC published its response to the Green Paper: "BBC Response to A strong BBC, independent of government".

CHAPTER 2: THE IMPORTANCE OF THE BBC

7. The vast majority of those who gave oral or written evidence to us were united in wanting to see a strong BBC. Even the BBC's major competitors spoke of its value. ITV told us "As competition for audiences and commercial revenues intensifies, the BBC's role at the heart of Britain's public service broadcasting ecology may become even more important than in the past" (p 114). Channel 4 described itself as "a strong supporter of the BBC as the cornerstone of public service broadcasting" (p 61). Channel five agreed and described the BBC as "a benchmark for quality in programming" which "acts as an exemplar of Britain in the wider world" (p 129). Richard Freudenstein, Chief Operating Officer of BSkyB, stated that BSkyB has "a great deal of respect for the BBC" (Q 593). The Satellite and Cable Broadcasters Group, the trade association for satellite and cable programme providers, told us that "the BBC should remain strong, independent and the cornerstone of public service broadcasting in the UK" (p 232).¹
8. Moreover, there was a strong political consensus on the BBC's importance—as representatives of the Conservative, Labour and Liberal Democrat parties testified to us. In her foreword to the Green Paper, Tessa Jowell, the Secretary of State for Culture, Media and Sport states that "Government recognises the enormous contribution that the BBC has made to British life and culture, both at home and abroad. We also agree with the majority of British people who want to see that contribution maintained into the multi-channel future".² Theresa May, the Shadow Secretary of State for Culture, Media and Sport, told us "a strong BBC is important both for the UK and indeed for the broadcasting industry" (Q 1096). Don Foster, the Liberal Democrat spokesperson for Culture, Media and Sport, agreed and stated that his party "want to see the BBC being strong, independent and well and securely financed" (Q 1142).
9. In spite of such support, there have been occasions when governments have sought to use their powers over the BBC to influence its editorial decisions. In his memoirs, the late Sir Robin Day recalled that Harold Wilson threatened the BBC over its reporting of the 1965 Labour Party conference stating that if the BBC did not mend its ways the government would see that it did.³ In 1971 a Conservative Government, concerned by the BBC television programme "The Question of Ulster", subjected the BBC to what its Editor of News and Current Affairs described as "the most sustained attempt to keep it off the air" the BBC had yet experienced.⁴ And both Margaret Thatcher and John Major, when Prime Minister, rattled their sabres when vexed by BBC editorial decisions.
10. There is also public criticism of the BBC. In early 2004 the Department for Culture, Media and Sport (DCMS) commissioned a company specialising in qualitative research and consultancy, Cragg Ross Dawson, to investigate public attitudes to the BBC. Focus group discussions showed that there was

¹ Of course as chapter six illustrates the BBC's competitors had different views regarding the role that the BBC should play.

² Department for Culture, Media and Sport, Review of the BBC's Royal Charter: *A strong BBC, independent of government*, March 2005, p. 2

³ See Sir Robin Day, *Grand Inquisitor: Memoirs* (1989), Weidenfeld & Nicolson

⁴ See *inter alia* Michael Leapman, *The Last Days of the Beeb* (1987), Coronet Books, p. 95.

a marked, but not universal, perception that the quality of BBC programmes had declined. “Dumbing-down” is not the only criticism levelled at the BBC. It has been suggested that the BBC is not always impartial in its radio and television reporting. A number of respondents to the Government’s initial consultation thought that the BBC “had a high level of biased reporting”.⁵ Nevertheless although some people do criticise the BBC for having its own agenda it is fair to say that the nature of the perceived agenda tends to vary to suit the complainant’s viewpoint.

11. In spite of these criticisms, national surveys of BBC viewers and listeners show BBC services are rated exceptionally highly. The BBC’s news and current affairs programmes are generally both highly regarded and trusted. A MORI survey for DCMS showed that 77 per cent of the UK public believe the BBC to be independent and impartial, 80 per cent trust BBC News and 82 per cent consider BBC News to be accurate. And 84 per cent of people in the UK listen to or watch the BBC news each week. Abroad, the BBC World Service is seen as the most objective international radio broadcaster in almost every country surveyed (p 389)⁶ and at home it has an overall satisfaction rating of 75 per cent.⁷ The BBC’s reputation is particularly impressive when considered in light of a recent YouGov poll commissioned by the Press Gazette. This asked a representative sample of more than 2,000 members of the public to name one newspaper, magazine, broadcast news programme or news website that they considered to be trustworthy. The BBC was mentioned five times more than its nearest rival.⁸
12. The BBC is also important for its role in developing national talent in broadcasting—many directors, scriptwriters, actors and technical staff owe the opportunity to develop their skills to the BBC. And its importance is underlined by the fact that it is one of only two UK television companies that cannot be bought out by foreign investors (the other being Channel 4). Until very recently, there was a restriction on UK commercial terrestrial television companies being taken over by companies outside Europe. The Communications Act 2003 changed that position and as a result an American company could now take over ITV or Channel five (currently majority owned by the German company Bertelsmann) although no reciprocal arrangement exists in respect of UK companies taking over American broadcasters. There would be a risk, if ITV or Channel five were taken over by an American company, that they would be used as an outlet for even more American produced programmes than are now screened on UK television.
13. The BBC is more than just a provider of public service broadcasts in the sense of American Public Broadcasting Service (PBS) and National Public Radio (NPR) channels. Unlike PBS and NPR in the USA, the BBC is

⁵ 33% of consultation respondents made reference to the BBC’s news coverage, of these 39% thought that the BBC had a high level of biased reporting. See Department for Culture, Media and Sport, Review of the BBC’s Royal Charter: *What you said about the BBC*, July 2004 (para 5.21)

⁶ The only exceptions are Russia, where Radio Liberty is ahead on trust, and Saudi Arabia, where Radio Monte Carlo leads on objectivity. In Egypt the most trusted international broadcaster is Al Jazeera (TV) (54%); 3 points ahead of the BBC (radio and online), and 10 points ahead for objectivity (48% against BBC 38%).

⁷ Ibid.

⁸ The research was conducted online by YouGov Ltd. Fieldwork ran from 7th to 10th January 2005. A sample of 2,178 GB adults aged 18+ were interviewed. www.YouGov.com

funded by licence fee payers from all walks of life. Therefore the BBC rightly seeks to inform, educate and entertain everybody. The BBC is an all-encompassing public broadcaster not simply a provider of public service broadcasts. MORI's poll showed that 72 per cent of licence fee payers would miss the BBC if it were not there.⁹

14. The BBC thus remains fundamentally important to UK culture and the UK's reputation abroad. We want to see its position strengthened. But we also want to ensure that the BBC continues to respond positively to increased public expectations of openness and accountability. To advocate such a change is not an "attack" on the BBC (as some inside the organisation may believe) but a recognition that the public provides more than £3bn a year in public funding to the BBC and has the right to be assured that such monies are well spent. There may be different views on the importance and cost of different programmes but there is no reason why external scrutiny should compromise the editorial independence of the BBC and its broadcasters and producers.

The context of the digital revolution

15. We are also anxious to ensure that the BBC responds appropriately to the rapidly changing media market. The advent of digital television, digital radio and broadband internet access is fundamentally changing the broadcasting market and the way people watch and listen to programmes and access news and information.
16. 60 per cent of UK households now have digital television and Ofcom, the industry regulator, projects that this will rise to 80 per cent by the date set for final analogue switch-off.¹⁰ Digital television makes an increasing array of channels accessible. But this increase in choice has already led to a fragmentation in audiences. Between 1993 and 2003 the audience share enjoyed by non-terrestrial channels nearly quadrupled (from 6 per cent in 1993 to just under 24 per cent in 2003). This shift has mainly been at the expense of ITV and BBC1.¹¹
17. Digitalisation means more than just increased choice in television and radio channels. Digital television brings interactive "red button services" which allow viewers to determine their viewing experience. With a touch of the remote control a digital viewer can choose from an array of screens which can be used for a range of civic and commercial applications. Viewers are now able to learn more about a particular subject, whether a product promoted in an advertisement or a topic covered in a programme. "Red button services" also allow for increased interactivity. During certain programmes digital viewers can choose which camera angle they prefer and can use their remote controls to vote in live polls and competitions. And new routes for participation via "red button services" are still being developed. For example, in May 2005 the Media Trust charity enabled digital satellite viewers of the Community Channel to use the red button to search for volunteering opportunities in their locality. Digital radio eradicates the interference that can spoil analogue radio transmissions. In addition digital

⁹ Ibid.

¹⁰ Ofcom review of public service television broadcasting, *Phase 2 – Meeting the digital challenge*, para. 3.20.

¹¹ Ibid, para. 3.19.

radio transmissions may carry data information which can be displayed on a small screen forming part of the radio receiver.

18. New technologies are also affecting how people access programming. It is now possible to watch and listen to programmes on a home PC, a laptop and even a mobile phone. And at the same time Personal Video Recorders, which enable people to avoid advertising and to create their own television schedules, are becoming more commonplace and may soon be in most homes.
19. Traditionally television was a “push” medium. Broadcasters were in charge of people’s viewing experiences and people watched what the broadcasters provided, when they provided it. But now television is becoming a “pull” medium, where viewers choose what they want to watch and when they want to watch it. Television is not the only medium affected. The BBC acknowledges that digital radio, podcasting and broadband internet “are all technologies that have the potential to transform the relationship the media have with their audiences”.¹² The internet in particular broadens the global range of suppliers accessible to UK viewers and listeners—one can now download podcasts from all over the world and listen to internet delivered radio from scores of different countries. The internet also broadens the range of possible audiences for BBC services across the globe.
20. These changes present challenges for the BBC and the broadcasting industry as a whole. The BBC states that “The digital world, and the BBC’s vision of its mission within it, calls for profound changes to the BBC as an organisation”.¹³ This Charter Review provides an opportunity to equip the BBC with the tools it needs to survive and thrive in this time of change and to drive that change for the benefit of viewers and listeners.
21. The BBC has suggested that the Green Paper understates the importance of digital technologies.¹⁴ This is true. Ten years ago it was impossible to imagine the internet’s importance in the lives of many people in Britain. How can we therefore predict what the broadcasting world will be in another ten or twelve years, except to say that it is likely to be vastly different from today? Nevertheless some needs and values endure and these include the need for independent, accurate and impartial broadcasting which engages with people across the United Kingdom and the world. The BBC should be a beacon for these values.

¹² Review of the BBC’s Royal Charter: BBC Response to *A strong BBC, independent of government*, p. 3.

¹³ Building Public Value, *Renewing the BBC for a digital world*, p. 5.

¹⁴ Review of the BBC’s Royal Charter: BBC Response to *A strong BBC, independent of government*, p. 3.

CHAPTER 3: SAFEGUARDING THE INDEPENDENCE OF THE BBC

22. The title of the Green Paper “A strong BBC, independent of government” proposes the criterion by which the Government’s recommendations should be judged. Research shows that the BBC plays a uniquely important role in informing the British public. 85 per cent of participants in MORI’s quantitative research agreed that “the BBC has an important role in keeping the public informed about what is going on in the UK”.¹⁵ For this reason it is vital that the BBC is impartial and is safeguarded from political pressure.
23. There have been occasions when individuals inside the BBC seem to have equated the BBC’s independence with a lack of accountability to any external body. We reject this claim; the BBC can be both independent and accountable. We therefore bring forward proposals for improving the BBC’s accountability but without compromising its editorial and journalistic independence.
24. We recognise that a broadcaster of news and current events programmes will experience some level of political pressure. John Humphrys, one of the presenters of BBC Radio 4’s Today Programme, told us that politicians try to negotiate before an interview and suggest that particular topics should be off limits. But he told us “I do not find anything improper in that at all” (Q 174). In the same way, Gavyn Davies, Chairman of the BBC from 2001 to 2004, stated that “In normal times pressure, insofar as it existed was with regular meetings with MPs or with government ministers. It never bothered me in the slightest; I took that as part of the process of gathering informed opinion about the impartiality of the BBC’s output” (Q 357).
25. This kind of day-to-day exchange between BBC journalists and politicians is not radically different from the pressures experienced by newspapers and other broadcasters. But there is a fundamental difference between the Government’s relationship with the BBC and its relationship with say ITN, Sky News or the national press. In respect of the BBC, and only the BBC, the Government has direct powers: to set the level of BBC funding, to appoint those in charge and to define the BBC’s remit in the Charter and Agreement. The Government’s possession of such powers has led the BBC to fear serious political pressure. If the BBC is genuinely to be independent of Government then arrangements which minimise opportunities for Government to bring improper pressure to bear on the BBC are required in each of these areas of potential influence.
26. The political independence of the BBC was bought sharply into public focus by the BBC’s reporting of the Iraq war, the events surrounding the tragic death of Dr David Kelly in July 2003 and the subsequent inquiry by Lord Hutton. These events have been well documented and will not be revisited here. But they are relevant to our inquiry because they suggest that the BBC’s current constitutional and funding arrangements are not sufficiently robust to prevent unease within the BBC about its future should it upset the Government of the day.

¹⁵ Department for Culture, Media and Sport, Review of the BBC’s Royal Charter: *What you said about the BBC*, July 2004, p. 12.

27. During the period of Lord Hutton's inquiry and the events which preceded it, the BBC feared that its political independence was at risk. This fear was experienced by staff up to the Chairman and Director-General. Gavyn Davies told us that he felt that the BBC was put under pressure to cover the war in Iraq in a way that he did not think was fair (Q 358). He believed that the Government had considered using its powers over the BBC to punish the BBC for its coverage of the war: "there were substantial press reports which we believed were correctly reported saying that the Government would change the governance of the BBC... and change the funding of the BBC as a result of what happened that summer" (Q 370). Gavyn Davies resigned, at least in part, because he did not think it would be feasible for him to remain Chairman of the BBC and successfully negotiate the new Charter (Q 371).
28. There is a further point. The central importance of the BBC's independence should not mask another issue raised by Lord Hutton's inquiry—that of improving the accuracy of BBC reporting. Andrew Gilligan testified to Lord Hutton that he had not reported accurately in all respects and said "I do regard those words as imperfect and I should not have said them".¹⁶ We believe measures for securing accuracy, and the prompt correction of the errors that will inevitably occur in reporting, can be achieved by improved management, governance and regulatory arrangements that do not compromise independence. We return to these issues in chapter four where we make recommendations about the most appropriate bodies to discharge each of these distinct responsibilities. We do not believe the Government's proposals are the best available both to secure the BBC's independence and to foster accuracy in its reporting.
29. We also believe that the BBC should adhere to the standards of conduct demanded of other public bodies, and that this can be done without jeopardising its independence. Indeed its independence may thereby be strengthened. **We therefore recommend that the BBC should take measures to ensure that the Nolan principles of standards in public life are strictly observed throughout the BBC. Those responsible for BBC programming should stand down from reporting on an issue if they have a direct conflict of interest. They should be required to publicly declare relevant interests that could be reasonably perceived to influence their reporting.** The issue of the Freedom of Information Act 2000 and the BBC has been raised and we will consider this in our next report.

The Government's proposals

30. The stated aim of the Government's proposals is to ensure that no Government, of any political persuasion, will have the power to compromise the political independence of the BBC. However, while the Green Paper shifts some powers from the Secretary of State to the proposed BBC Trust, the Government will retain the three crucial holds over the BBC referred to in para 25: it, and it alone, will continue to determine the terms of the Royal Charter and accompanying Agreement between the Secretary of State and the BBC; it will continue to appoint those responsible for the BBC; and it

¹⁶ Report of the Inquiry into *the Circumstances Surrounding the Death of Dr David Kelly C.M.G.* by Lord Hutton, p. 165, para. 245.

will continue to set the level of the licence fee. It will do all of these without adequate parliamentary scrutiny or meaningful debate.

31. It is not for this Committee to determine whether or not the Government actually did, or would bring improper pressure to bear on the BBC over its coverage of the Iraq war. The point is that outside as well as within the BBC the established funding and governance arrangements were perceived as making the BBC vulnerable to such pressure. Of course, this perception of the BBC's vulnerability is not a new issue. Prime Ministerial hostility to the BBC has a long history, as we noted in para 9.
32. Whether Gavyn Davies's fears were well founded is something we may never know. He does not think that the Green Paper's proposals represent a Government desire to punish the BBC. But both he, and his Director-General Greg Dyke, wondered whether the Government's proposals would be have been different had they not resigned (Q 371). That the Chairman and Director-General of the BBC were worried about the Government's ability to bring improper pressure to bear on the BBC suggests that its editorial independence needs strengthening. Accordingly, the core of our proposals is a strengthening of the BBC's editorial independence. And this is our most important ground for dissatisfaction with the Government's proposals. **We do not believe that the Government's proposals in the Green Paper will reduce the BBC's vulnerability to political pressure. We therefore recommend that the Government adopt our recommendations so as to secure a strong BBC, truly independent of Government.**

The constitution of the BBC: Charter or Statute?

33. We believe it is vital that the process for agreeing the constitution of the BBC is open, transparent and not in the hands of any one political party. Unfortunately the process for agreeing a Royal Charter satisfies none of these criteria. Although, during this Charter Review, there has been public consultation, an independent report and two parliamentary Select Committee inquiries, the fact is the Government do not have to listen to anyone and can draw up the new Charter and Agreement as they please—indeed this is what they seem to be doing.¹⁷ Even if the Charter and Agreement are put to a vote in the House of Commons (something the Secretary of State said was a matter for the Whips (Q 1805)) there would still not be proper parliamentary scrutiny in the way that there would be if the BBC were established by statute. In our view there should be proper parliamentary scrutiny and that scrutiny should involve both Houses of Parliament.
34. We propose therefore that the BBC should be placed on a statutory basis by Act of Parliament. Such an Act could provide for periodic reviews of BBC services, involving public consultation, and be tied in with Ofcom's quinquennial reviews of Public Service Broadcasting. It could also provide for a periodic review of licence fee funding.
35. There are several grounds for proposing that the BBC be established by Act of Parliament. First, establishment by Royal Charter is an arcane and little

¹⁷ It is important to note that since 1997 ad hoc arrangements have been made for the House of Commons to debate amendments to the BBC Agreement.

understood procedure. Second, the passage of an Act through Parliament is a more transparent and democratic route than agreeing a Royal Charter through the Privy Council. Third, a statute can more explicitly enshrine the BBC's editorial independence and provide for long term certainty and transparency over the BBC's basic terms of reference. We received evidence supporting the replacement of the Royal Charter by an Act of Parliament from the Campaign for Press and Broadcasting Freedom (p 478) and the Commercial Radio Companies Association (p 330).

36. However, Michael Grade, the Chairman of the BBC, was against establishing the BBC by statute. He believed that "The Charter allows the BBC to be one step removed from a vote in both Houses" (Q 57). The Government have also argued that if the BBC was a statutory body it might be more open to Government intervention. They suggest that if the BBC were established by statute there would be no guarantee of its long term existence or independence because legislation would be subject to repeal or repeated amendment.¹⁸
37. Tessa Jowell defended the status quo on the grounds it had been the constitutional basis for the BBC for the last 80 years (Q 1809). However, the Satellite and Cable Broadcasters Group stated in its evidence that "the Royal Charter and Agreement are anachronisms that do not reflect recent reforms in other areas of public life and publicly funded institutions. The appropriate way for the BBC to be re-established, and given long-term security with independence from Government, is as a statutory corporation like the UK's other principal public service broadcaster Channel 4" (p 235).
38. Tessa Jowell cited licence fee payers' wish for clear independence of the BBC from Government and Parliament as a reason why the BBC should not be established by statute (Q 1807). She referred to research showing that only 9 per cent of people surveyed thought that the Government should be responsible for holding the BBC to account when things go wrong and just 4 per cent thought that Parliament should.¹⁹ While we accept that these statistics do not show support for political involvement of any kind we fail to see how the Secretary of State can pray them in aid of continuing with the Royal Charter. Qualitative research showed that respondents were general unclear about the boundary between Parliament and the Government. Given that the Royal Charter is drafted by the Government, and therefore is not independent of Government, it seems strange that the Secretary of State would cite this research as evidence for continuing with a Royal Charter.
39. In respect of its role towards the BBC the Privy Council is an instrument of Government. It has a ministerial president and only ministers of the Government of the day participate in the Privy Council's policy work. The Privy Council's own guidance shows that the terms of a Royal Charter are not formulated independently of Government. It states that "once incorporated by Royal Charter a body surrenders significant aspects of control of its internal affairs to the Privy Council. Amendments to Charters can be made only with the agreement of The Queen in Council, and amendments to the body's by-laws require the approval of the Council

¹⁸ Department for Culture, Media and Sport, Review of the BBC's Royal Charter: *A strong BBC, independent of government*, March 2005, p. 57.

¹⁹ Department for Culture, Media and Sport, Review of the BBC's Royal Charter: *What you said about the BBC*, July 2004.

(though not normally of Her Majesty). *This effectively means a significant degree of Government regulation of the affairs of the body*" [our emphasis].²⁰

40. Given the large Government majorities that have been seen in the House of Commons it would be possible to argue that establishing the BBC by statute would not reduce Government control over the Corporation. However, legislation would have to pass through both Houses of Parliament and Governments do not always have an overall majority in both Houses. Moreover, the future of the BBC is an issue on which we believe many MPs would wish to decide for themselves, irrespective of their party whips.
41. The House of Commons is the premier democratically elected forum in the United Kingdom and is the only forum that can claim to represent all licence fee payers. Allowing the democratically elected representatives of the people to be involved in defining the terms of the BBC's constitution would increase accountability to the licence fee payer. Proper Parliamentary scrutiny of Government proposals for the BBC means that Ministers would have to stand up and defend their plans in a public forum. This will increase the transparency and accountability of the BBC. The House of Lords should continue to have a full scrutiny role and we believe that a permanent House of Lords Select Committee on Broadcasting and Communications is vital to this scrutiny (see para 44).
42. We do not accept that the current arrangements, whereby the Charter is renewed by agreement between the Government and the BBC, provide the most effective way to guarantee the public interest. **We recommend that the BBC be established by statute so that its constitution is subject to parliamentary scrutiny. We note that the House of Commons Committee came to the same conclusion and we urge the Government to reconsider its proposal to persist with a Royal Charter.** We believe that establishing the BBC by statute would better protect the BBC's political independence by reducing Government influence in favour of Parliamentary influence. Parliament is an all-party body directly accountable to the public. Discussions leading to decisions in Parliament are conducted publicly, whereas the Royal Charter process is open to possible political interference by the governing party which makes its final decisions behind closed doors. The BBC's independence of Government would be notably strengthened.
43. It takes time to prepare legislation, and to find space in the Government's legislative programme, and therefore it may not be possible to have legislation in place by the time the current Royal Charter runs out in December 2006. **We therefore recommend that a short interim Charter be granted to the BBC while legislation is being prepared.** Meanwhile it is vital that Parliament continue to scrutinise any Government proposals for change to the BBC's Charter and Agreement. At present there is a curious position whereby the Government could amend the Charter without reference to Parliament but would have to get the approval of the House of Commons before amending the Agreement between the Secretary of State and the BBC (a document of lesser status than the Charter). This arrangement is curious for two reasons: first that only one of the two documents needs parliamentary approval before it can be amended and second that only the House of Commons has to give that approval. **We**

²⁰ <http://www.privacy-council.org.uk/output/Page44.asp>.

recommend that it should not be possible to amend the Agreement between the BBC and the Secretary of State without approval of both Houses of Parliament. In addition, if it is necessary to grant another Charter while legislation is being prepared, the Government should undertake that the Charter will not be amended without the approval of both Houses of Parliament.

44. Although this is a matter for the House of Lords Liaison Committee, in order to strengthen parliamentary scrutiny, **we recommend that a permanent House of Lords Select Committee on Broadcasting and Communications should be established.**

CHAPTER 4: GOVERNANCE AND REGULATION OF CONTENT²¹

45. It is essential that a body receiving more than three billion pounds of public money each year is governed and regulated so as to command the confidence of the public and the wider industry.²²
46. In chapter three we foreshadowed our intention to make recommendations for a clearer division of management, governance and regulatory responsibilities and to promote accuracy in BBC reporting (and in its output more generally). Following Lord Hutton's inquiry and report, the BBC has responded constructively to the management issues which arose, notably by commissioning and implementing the Neil Report.²³ But important governance and regulatory issues remain.
47. Despite the Government's proposed arrangements for BBC governance and regulation being among the most controversial parts of the Green Paper, the Secretary of State told us they have White Paper status and therefore are not open for consultation: "The Green Paper was quite deliberately framed in a way that was a bit like a pistachio ripple: there were some white proposals which had White Paper status, particularly on the regulatory framework and governance" (Q 1797). Because of this we can only conclude that the Government and the BBC are committed to the course set out in the Green Paper. This illustrates the fundamental flaw in the process of defining a Royal Charter which we discussed in the last chapter. It is precisely the parts of the Green Paper to which the Government has given White Paper status that command little support from commentators—including the independent panel, chaired by Lord Burns, which the Government appointed. We received considerable evidence criticising the Government's proposals in this area. For example Sir Christopher Bland, Chairman of the BBC from April 1996 to September 2001, told us "I do not think the proposals, as laid out in the Green Paper, do work or will work. They are an uneasy compromise between having a separate regulatory body and a German-style two-tier form of governance" (Q 1008). We therefore regret that the Government have indicated that they will be inflexible about their governance and regulatory proposals and that as a result Parliament has been and will be excluded from playing any part in shaping and approving them. We note that the even if these proposals do have "White Paper status" this does not preclude the Government from changing them. There is absolutely no reason why White Paper proposals cannot be changed and indeed they frequently are.
48. The Government have stated that "Governance is the central issue for this Charter Review" and that the BBC must be held to its public purposes through a "powerful governing body".²⁴ However, the solution they put forward, the BBC Trust, is not simply a governing body. It has regulatory functions too. We believe these functions need to be considered separately.

²¹ In this report we do not consider the regulation of the BBC's online content. Regulation of the internet is a complicated subject and not one that we have had time to address.

²² BBC Annual Report and Accounts 2004/5, p. 104. This figure is derived from summing the licence fee income of £2940 million and the World Service grant in aid of £225 million.

²³ The BBC's Journalism After Hutton: *The Report of the Neil Review Team*, June 2004.

²⁴ Department for Culture, Media and Sport, Review of the BBC's Royal Charter: *A strong BBC, independent of government* (March 2005) para 5.1.

49. Governance involves the arrangements which ensure that the interests of both society at large and the members/owners of an organisation are taken into account. With reference to the BBC it can be said to involve six main tasks: supervision of management; representation of licence fee payers' interests; accountability for the use of public money; interpretation of and safeguarding the delivery of Public Service Broadcasting (PSB); guardianship of the BBC's editorial independence and ensuring high levels of quality and accuracy in BBC coverage of the world. Regulation involves specifying and ensuring adherence to rules that secure the public interest. The Government is attempting to address defects in the governance *and* the regulation of the BBC by changes exclusively to its governance and we believe this cannot and will not work.²⁵

Why is reform necessary?

50. At the moment the BBC is governed by a Board of Governors who are appointed by the Queen in Council and work within the terms of the Royal Charter to deliver the objectives set out in the BBC's Agreement with the Secretary of State. The BBC is managed by an Executive Board appointed by the Board of Governors. The legal personality of the BBC rests with the Board of Governors.
51. These arrangements have served well enough in the past. Under this system the BBC developed into an internationally respected institution. In chapter two we referred to evidence testifying to widespread respect for the BBC and we recognise that this respect has been earned by a BBC operating under a Board of Governors. Lord Burns explained that his independent panel had not concluded that there had been many great problems in the past, or that the system was fundamentally broken, but believed change was necessary because the world outside the BBC had changed not least in corporate governance and the shape of the media industry (Q 240). We agree. The changing broadcasting market has put the BBC in an increasingly complex and challenging market position that requires careful independent regulation and distinct governance. In addition, the last decades have seen the emergence of more rigorous systems of corporate governance in both the public and private sectors. We consider the case for change in both these areas below.

The need for clarity in content regulation

52. There is no single body responsible for regulating all the BBC's activities. Whereas Ofcom is responsible for all areas of content (and competition) regulation in respect of the UK's other broadcasters, it shares responsibility for some aspects of regulation of BBC content with the BBC's Governors. Recently, for example, both the BBC and Ofcom adjudicated on the complaints each had received in connection with the BBC's broadcast of "Jerry Springer: the Opera".
53. The Communications Act 2003 splits regulation of broadcasting content into three tiers.

²⁵ In this chapter we only consider the regulation of content. The regulation of those BBC activities which have an impact on the market are considered in chapter seven.

- tier 1 regulations relate to avoidance of harm and offence, impartiality, subliminal messages and fairness and privacy;
 - tier 2 regulations apply to designated public service broadcasters and consist of quotas for certain programmes (e.g. news) and types of production (e.g. out of London production);
 - tier 3 regulations comprise the public service remit of designated public service broadcasters (e.g. the monitoring of statements of programme policy for each channel).
54. Ofcom is responsible for all these areas of regulation in respect of commercial broadcasters and Channel 4. But for the BBC the Governors hold some of these regulatory functions, Ofcom holds others, and some are shared by both. For example if a complaint relates to the accuracy and impartiality of a programme, the BBC is finally responsible. But complaints about harm and offence or fairness and privacy (other tier 1 matters) may be addressed by the BBC, by Ofcom or by both. Programme and production quotas (tier 2 matters) require the BBC to obtain Ofcom's agreement to its levels of original programming and out of London production whereas the BBC Governors set all other quotas. With reference to defining the BBC's public service remit (a tier 3 matter), the BBC is only obliged to "consider anything of relevance" in Ofcom guidance, reports and reviews. The BBC itself is responsible for assessing the quality and effectiveness of its services though Ofcom has responsibilities for public service broadcasting as a whole.
55. This raises particular questions about the types of complaints procedures that are appropriate:
- Can complainants about the BBC be confident of fair treatment when the final adjudicating body is the BBC's governing body?
 - Can complainants be expected to understand the regulatory structure and effectively represent their interests when regulation is split between two bodies?
 - Can those inside the BBC, who are responsible for adjudicating on complaints, make independent judgements when they both depend on the BBC's management for information and also appoint the management?

The need to represent the licence fee payer

56. 42 per cent of respondents to the Government's initial consultation addressed the issue of accountability. Of these around two-thirds said they wanted increased accountability to the public. There was a strong sense that public involvement might extend further than at present, delivering advice and feedback on broader strategic and policy issues.²⁶ The Government believe that "it has proved difficult for the existing Board of Governors to represent both the public interest and the BBC executive at the same time".²⁷
57. We believe that any reform of the BBC should secure:

²⁶ Department for Culture, Media and Sport, Review of the BBC's Royal Charter: *What you said about the BBC*, July 2004, p. 43.

²⁷ Department for Culture, Media and Sport, Review of the BBC's Royal Charter: *A strong BBC, independent of government*, March 2005, p. 64.

- a governance body which sees itself as responsible to the licence fee payer, not to the Government, and which strives to connect with the licence fee payer on a regular basis;
- a clear and understandable independent regulatory system;
- a simple complaints procedure which must have the confidence of the licence fee payer and the wider industry.

The BBC's own proposals for reform

58. The BBC recognises that its system of governance must change significantly if it is to retain public confidence over the next Charter period.²⁸ In Building Public Value the BBC proposes to “ensure clear and indisputable independence of the Board of Governors from the management of the BBC ... introduce a new framework of transparent scrutiny of the BBC’s activities by the Board of Governors... [and] make the BBC more responsive and accountable to the British public”.²⁹ To realise these objectives the BBC has already established a distinct Governance Unit to advise the Governors; it has overhauled its complaints system and proposes to introduce a public value test for new services. To connect better with the licence fee payer it has created a Governors’ website and began holding “Annual General Meetings”. It also intends to use new technology to engage with licence fee payers and to give a stronger role to its advisory bodies.
59. Some of the BBC’s new ideas for engaging with the licence fee payer are promising but its proposals to reform governance and regulation have not gone far enough. The Government agree. Lord McIntosh of Haringey, the then Minister for Broadcasting, told us that the BBC’s proposals represented behavioural change when structural change was needed (Q 104).
60. There are two schools of thought about the necessary structural changes. The first (based on current arrangements) advocates responsibility for regulatory duties continuing to rest with the BBC. The Government are proponents of this school. The second gives the regulatory powers, currently vested in the BBC Governors, to a body independent of the BBC. The Lord Burns Panel proposed such a model. We will consider the pros and cons of Lord Burns’s model first, before considering the Government’s model and finally proposing our own model.

The Lord Burns Panel’s proposals for reform

61. The Lord Burns Panel proposed a new independent body called the Public Service Broadcasting Commission (the Commission). The Commission would be “small” and have a Chairman and non-executive commissioners appointed by the Government. Ofcom’s regulatory role in respect of the BBC’s commercial activities would be strengthened. The Commission would also assume the Government’s powers to approve new BBC services. An important, and controversial, feature of the Commission is that it would have powers to judge how much of the licence fee should be awarded to sustain public service broadcasting outside the BBC (see chapter five).

²⁸ Building Public Value, *Renewing the BBC for a digital world*, p. 23.

²⁹ Ibid.

62. Under this model the BBC would be run by a unitary BBC board modelled on best corporate governance practice. The board would have a majority of non-executive directors including a non-executive chair. It would remit some governance functions to dedicated nomination, remuneration, audit and complaints sub-committees. The unitary BBC board's non-executive Chairman would be appointed by the Government and (together with another non-executive director and an independent appointee e.g. from the Civil Service Commission) would recommend other non-executive appointees to Government. The legal personality of the BBC would reside with the unitary BBC board.
63. Ofcom would have increased competition powers to regulate the BBC's commercial activities and the interface between its commercial and PSB activities. Ofcom would also carry out market impact assessments of BBC services at the request of the Commission.
64. These proposals have two clear strengths. First, there is much to be said for the creation of a unitary BBC Board to take on the governance and supervision of the management of the BBC. And secondly, there is a clear separation between regulator and regulatee—the BBC would no longer be seen as judge and jury in its own cause.
65. The unitary board is a clearly understood governance model with a proven UK track record. Sir Derek Higgs, author of the review of the role and effectiveness of non-executive directors,³⁰ told us “The overwhelming feeling in this country in the corporate sector was that a unitary board had clear advantages over a supervisory board structure; part of that is familiarity, culture and history” (Q 1265). Although Sir Derek did not personally support this structure for the BBC (Q 1263) we agree with Lord Burns—it provides a clear, workable model for the BBC. We share Sir Christopher Bland's view that “in spite of the zeitgeist of the times, a unitary Board of Governors actually makes the most logical sense” (Q 1015).
66. Separating the regulator of the BBC from the BBC is widely supported. ITV told us that “independent and objective regulation of the BBC is essential to provide maximum accountability to licence fee payers and responsiveness to the legitimate concerns of the BBC's commercial competitors” (p 114). The Satellite and Cable Broadcasters Group told us that “The appropriate way for the BBC to be operated and regulated is, like every other British broadcaster, under licence—either from Ofcom or from a newly established Public Service Broadcasting Commission” (p 235).
67. However, we are concerned about three aspects of Lord Burns's model. First, that the Commission would have powers to allocate some of the licence fee to other public service broadcasters. This would break the link between the licence fee payer and the BBC (see chapter five). Sir Christopher Bland told us the Commission model “only makes sense if you want contestable public service broadcasting funds” (Q 1025). Second, this model involves creation of a new regulator with all the resource requirements that such a body would entail. Another regulator would further complicate matters for complainants. Third, this model leaves the weak link between Ofcom's responsibilities on the one hand for periodical review of public service television and for regulation of the sector to secure public service goals and

³⁰ *Review of the role and effectiveness of non-executive directors*, Derek Higgs, January 2003.

on the other Ofcom having fewer regulatory powers in respect of the BBC than it has in respect of other PSBs.

The Government's proposals for reform

68. The Government believe, as Lord McIntosh of Haringey told us, that they have taken “the best bits” of the proposals from the BBC and Lord Burns’s Panel (Q 104). A BBC Trust would replace the Board of Governors and a formally constituted BBC Executive Board would take responsibility for the management and delivery of all the BBC’s activities. The Executive Board would contain a significant minority of non-executives and would be accountable to the Trust for its performance.
69. The Green Paper sets out the proposed functions of the BBC Trust and Executive Board.³¹ The Trust’s responsibilities would be broadly the same as those of the current Governors but would differ in the following ways
- The Trust would issue service licences;
 - The Trust would approve the BBC Executive Board’s nominations for its non-executive members and may appoint a non-executive, rather than the Director-General, to chair the operating/executive board;
 - The Trust would determine the remuneration only of the Chairman of the Executive Board (but may also define the parameters within which remuneration for others is set);
 - The Trust would assume power to approve new services currently held by DCMS (though the Government will retain important loci of control by retaining responsibility for what the Green Paper calls “final sign off”) but will be required to involve Ofcom on “market impact issues”;
 - The Trust would have a stronger role in holding management to account (defining performance criteria and measures of delivery rather than “monitoring performance”);
 - The Trust would have a stronger role in promoting transparency, and thus accountability, to licence fee payers e.g. through commissioning value for money (VFM) studies and consulting with licence fee payers.
70. The Government have adopted Lord Burns’s recommendation that Ofcom should undertake market impact assessments of proposed new BBC services (see paras 219-224).
71. The Government’s proposed structure resembles a German two-tier board. Sir Derek Higgs told us that he saw the proposals as “akin to a supervisory board/management board situation” (Q 1272). However, Sir Christopher Bland described it as an uneasy compromise between a separate regulatory body and a German-style two-tier form of governance which did not clearly separate responsibilities (Q 1008). His view was that “If you are going to have a two-tier structure then something closer to a supervisory board in a German corporation makes more sense” (Q 1023).

³¹ Department for Culture, Media and Sport, Review of the BBC’s Royal Charter: *A strong BBC, independent of government*, March 2005, box 5.5.

Responsibility for governance and regulation

72. The Government state that their model adopts Lord Burns's recommendation of clear separation between governance and regulation.³² However, Lord Burns told us that the Government's model does "not go far enough as far as the separation is concerned" and that he would have preferred "a greater degree of separation so that they were clearly seen as distinctive animals" (Q 228). Other witnesses agree. Channel 4 told us "Although these proposals seek to create a structure within which there is a clear separation of functions... it is not yet clear that they will avoid the possibility of 'confusion or capture'" (p 64). BSkyB stated "By proposing a new BBC Trust to be responsible for 'oversight' (a term which encompasses both governance and regulation) and a new Executive Board to be responsible for 'delivery', the Green Paper seeks to clarify the distinction between the governance and management of the BBC, rather than clarify the distinction between the governance and regulation of the BBC... it does not address shortcomings in the current regulation of the BBC" (p 149).
73. We have sympathy with these concerns. We also note that the skills and experience needed by Trustees to carry out their governance role will be very different from those needed to carry out their regulatory role. This further weighs against giving both responsibilities to one body.
74. We believe an effective separation between governance and regulation can only be realised if the two roles are carried out by clearly distinct bodies. Neither the licence fee payer nor the BBC's competitors will have full confidence in a regulatory body unless it is quite separate from the BBC itself. We set out the details of our preferred model in paras 91 to 112.

The handling of complaints

75. The BBC has recently overhauled and improved its complaints system. The Green Paper does not propose change to the system (though responsibility moves from the Governors to the Trust). Therefore the Government's model neither provides for a single body to which complaints should initially be made, nor for assuredly independent adjudication of appeals. The Government's model preserves the current confusing position whereby complainants to the BBC may also complain to Ofcom—except where the complaint concerns impartiality or inaccuracy when jurisdiction rests with the BBC.
76. Whilst it is important that people should first address complaints to the organisation which is the subject of complaint (not least so that it can understand how its outputs are received) the split between the BBC's and Ofcom's responsibilities is unhelpful and confusing to complainants. Moreover, Ofcom's complaints procedure sets a time limit for submission of a complaint of six weeks (radio) or three months (television) after transmission. There is therefore a danger that viewers and listeners may run out of time if they first complain only to the BBC and subsequently refer their complaint to Ofcom. We note that there does not appear to be a warning to this effect on the BBC website.

³² Department for Culture, Media and Sport, Review of the BBC's Royal Charter: *A strong BBC, independent of government*, March 2005, para 5.31.

77. We believe that the BBC should have the opportunity to respond to all complaints in the first instance. However, it is essential, in the interest of clearness and transparency, that there should be a single body, independent of the BBC, to which complainants about BBC content and services can appeal and receive a final and independent adjudication. We set out the details of our preferred model in paras 100 to 110.

Two chairmen

78. The Government state that the Executive Board will be chaired by the Director-General, or, at the discretion of the Trust, a non-executive.³³ We are concerned about the confusions and uncertainties that might arise should anybody other than the Director-General chair the Board charged with managing the BBC. Sir Robert Phillis, the Chief Executive of the Guardian Media Group, told us that “the Chief Executive, must have a clear accountability to one person and not two. I think the notion of the chair of the Executive Board, the operating board, being the Director-General is the correct one” (Q 1273).
79. Michael Grade told us that the Government’s proposal was “a recipe for conflict” (Q 1737). Sir Christopher Bland agreed and said that “two chairmen will raise difficulties... Who is in charge and what happens when those two boards disagree?” (Q 1020). Greg Dyke described the likely relationship between the Chairman of the Trust and a non-executive Chairman of the Board as “warfare” (Q 378).
80. We do not think that the Government’s proposals are sensible and note that our evidence shows that current and past senior BBC management figures share this view. **We recommend first that there should be one Chairman of the BBC, i.e. the Chairman of the BBC Board, and second that the management committee (called the Executive Board in the Green Paper) should be chaired by the Director-General.**

The role of non-executives

81. The Government proposes a significant minority of non-executive members on the BBC Executive Board. We note that the Trustees (i.e. those sitting on the BBC Trust proposed by the Government) are also non-executive. We are concerned about the proposed role of non-executives on the BBC Executive Board. Their role will be very demanding and highly unusual. The Executive Board meets much more regularly than a standard company board and is responsible for much day-to-day management. In practice, if the BBC Executive Board has non-executive members, is likely that there will be a formal Executive Board, including non-executive members, and an informal Executive Board which deals with the day-to-day management of the BBC but which non-executives do not attend. This will introduce a further level of complication and potential tension in the organisation.
82. The German supervisory board structure does not include non-executives on the management board. In the traditional UK unitary board structure non-executives never sit on the management board. The Public Voice coalition, a voluntary sector body campaigning for citizens’ communications interests,

³³ Department for Culture, Media and Sport, Review of the BBC’s Royal Charter: *A strong BBC, independent of government*, March 2005, para 5.28.

told us “The presence of non-executives will create a new dynamic which may undermine the unity of the Board as broadcasters in deciding how the purposes are to be delivered; and could potentially lead to decisions being taken ‘outside the boardroom’” (p 166). The Government state that the non-executives are there as critical friends. We believe that is a duplication of the role of the Trustees.

83. We recommend that there should be no non-executive members on the BBC’s Executive Board.

Appointing the Chairman

84. The Green Paper is silent on how future chairmen of the BBC will be appointed. It simply states that all members of the BBC Trust shall be appointed by the Crown and that the process shall be subject to the full Nolan procedures for public appointments.³⁴ That is, current arrangements should continue, meaning that the Government retains the power to appoint the Chairman of the BBC. The job description will be drawn up by DCMS, the selection panel is likely to be chaired by the Permanent Secretary at DCMS and the panel will recommend an appointee to the Secretary of State at DCMS who will have the power to accept or reject the recommendation. Again the Government have not seized the opportunity to ensure a truly independent BBC.
85. Following Gavyn Davies’s resignation, the Government decided an extra level of oversight was needed to ensure confidence in the independence of the process used to appoint his successor. To this end a scrutiny panel was convened in addition to the traditional selection panel. The scrutiny panel was chaired by the Commissioner for Public Appointments and included three senior privy counsellors. The aim of the scrutiny panel was to ensure that the appointment process was conducted professionally, openly and fairly and complied fully with the code of practice for public appointments. The members of the scrutiny panel were not involved in drawing up the job description or in selecting the best candidate, but were simply there to ensure that the process was carried out fairly and properly.
86. The Leaders of the three main parties were each asked to nominate a privy counsellor to sit on the panel. However, the Conservative nominee, Lord Baker of Dorking, declined to take part. He argued that the scrutiny panel should be asked for views on the nature of the person who should get the job. In a letter to Dame Rennie Fritchie he stated “I would have expected the privy counsellors to be rather more involved in the selection process”.
87. Tony Wright MP, Chairman of the House of Commons Public Administration Committee, argued that these arrangements did not sufficiently ensure independence. He stated that “the Government... acknowledges the problem with the key constitutional appointments under the present arrangements. It seems to imply that the Nolan rules are not enough, even with someone like the present Commissioner for Public Appointments to keep an eye on the process”.³⁵

³⁴ Ibid, para 5.24

³⁵http://www.parliament.uk/parliamentary_committees/public_administration_select_committee/pasc_03_04_pn_09.cfm

88. We note that the Green Paper does not even go as far as to state that future appointments of BBC chairmen will have the additional layer of scrutiny that the last appointment had, however inadequate that may have been. But even if it did we do not believe that would go far enough. **We believe that the chairman of the BBC should be chosen on the basis of a recommendation by a truly independent panel. To this end we recommend that there be a duty on the Secretary of State to appoint a selection panel with a majority of non-political members and with a balance between its members who have explicit political allegiances. The panel should be chaired by a non-political member who is not a civil servant. This panel should operate according to Nolan principles and should recommend a short-list of one to the Prime Minister.**
89. The Voice of the Listener and Viewer argued that “transparency in the appointment of its Trustees is absolutely essential... we believe that it is incumbent upon Parliament to establish a system which is open and transparent and which commands the respect of licence-fee payers” (p 162). **We recommend that other members of the BBC Board (or the BBC Trust in the Government’s model) should be appointed in a similar manner to that described above with consultation of the BBC Chairman.**
90. In conclusion, we urge the Government to fundamentally re-think the BBC Trust model and adopt our proposals.

Our model

91. We propose a model which takes the three roles of management, governance and regulation and gives each of them to a different body.

Management and governance

92. For the reasons set out in paras 64 to 66 we propose a unitary BBC board, named the BBC Board, responsible for governing the BBC in accordance with best corporate governance practice. This board should see itself as responsible to the licence fee payer.
93. The BBC Board should have a majority of non executives and a non-executive Chairman who would be the Chairman of the BBC. The Director-General, Deputy Director-General and the Director of Finance should all be members. The non-executive members should perform a wide range of governance functions such as chairing the remuneration, appointments, audit, standards and complaints committees.
94. The BBC Board should sit above a management committee of senior executives which should be chaired by the Director-General. The appointments committee should make recommendations to the Board for the appointment of the Director-General.
95. The role of the Board should be to provide strategic oversight of the BBC’s activities; hold the BBC management to its public service remit; maintain programme standards of quality and distinctiveness and secure the BBC’s editorial and journalistic independence. It should approve budgets and be accountable for the use of public money. It should have a clear and distinct complaints committee where complainants are directed in the first instance. However, it should not have regulatory responsibilities.

96. Ensuring the accuracy of BBC reporting is a governance issue and not a regulatory issue. Governance addresses “must do” matters and one such vital matter is ensuring accuracy of reporting. Regulation addresses “must not do” issues. Regulation can inhibit inaccuracy through effective and appropriate sanctions. But it cannot actively ensure accuracy or monitor output for accuracy on a day-to-day basis. Accuracy is a particularly important governance issue as the events which led to Lord Hutton’s inquiry show. We believe that a major role of the BBC Board must be to foster and maintain a commitment to accuracy among BBC staff.
97. The membership of the BBC Board will be important. The Green Paper states that “Trust members need to be able to reflect the interests of a wide range of different communities (including members with the knowledge and expertise to understand and articulate the interests of individual devolved nations) and they need to have a range of expertise...”.³⁶
98. The Public Voice coalition told us that “all of the proposed purposes inherently require the BBC to be closely and continuously engaged with citizens and civil society. It is therefore vital to have a sufficient number of individuals appointed who have a real engagement with and experience of civil society and community action... and not just to rely on ‘traditional’ recruiting grounds among former public servants, financial experts and so on” (p 167). As well as reflecting the interests of a range of communities we also believe it would be valuable to the BBC if some of those responsible for its governance had specific skills and expertise in relevant media fields.
99. We believe it is vital that the skills of the Board members go beyond financial and managerial qualifications. Members of the Board should represent a range of experience from across public life, business, the professions and civil society. We do not believe that any Board member should have duties to represent a particular constituency or interest group. The aim of the selection process should be to find the best members irrespective of where they come from. Members of the Board should be the best people for the job from across the United Kingdom. We would expect the Board between them to have experience and knowledge of the nations and regions of the United Kingdom.

Regulation of content

100. An independent regulator is also vital. However, we do not think that the creation of a new regulatory body as proposed by Lord Burns represents value for money or makes broadcasting regulation either more effective or clearer for the public.
101. Ofcom already exists as the wider industry regulator and, if it were to develop a stronger Content Board, it could be given further duties to regulate the content of BBC television and radio. It already has the competence and experience to regulate PSB because of its varied duties to regulate Channel 4 (a non-profit organisation with a PSB remit), Channel 3 and Channel five (hybrid broadcasters with commercial and public service goals), and the BBC (in respect of all aspects of content regulation not reserved for the BBC Governors). It also has a duty to report regularly on public service broadcasting generally.

³⁶ Department for Culture, Media and Sport, Review of the BBC’s Royal Charter: *A strong BBC, independent of government*, March 2005, p. 12.

102. We received evidence against Ofcom being given the same powers of content regulation for the BBC as it has for other broadcasters. For example, the Campaign for Press and Broadcasting Freedom stated in its written evidence that “there should be review of the current levels of Ofcom regulation of the BBC to cut back the extent to which that essentially commercially orientated regulator can interfere with the BBC’s activities, and that includes Ofcom’s role as the final arbiter of complaints” (p 479). Lord Burns told us that his panel had considered whether Ofcom could take on full regulation of the BBC but had decided that regulation of the BBC would be quite different from regulating other broadcasters. He cited a range of issues unique to the BBC such as ensuring “value for money... how the licence fee is being spent, whether or not it is being spent in a way and with a quality that meets the remit that it is being given by the government”(Q 233).
103. We note concerns that Ofcom is an economic regulator. However Ofcom is not solely an economic regulator. It already regulates the content of other broadcasters and is charged with reporting regularly on PSB in the UK. Section 12(1) of the Communications Act 2003 established a Content Board as a committee of the main Ofcom board. The Content Board serves as Ofcom’s primary forum for the regulation of television and radio quality and standards. It is charged with understanding, analysing and championing the voices and interest of the viewer, the listener and citizen. Ofcom explains that “It will examine issues where the citizen interest extends beyond the consumer interest, with focus on those aspects of the public interest which competition and market forces do not reach”.³⁷
104. In its response to the Green Paper Ofcom does not propose that it should take on the regulation of all BBC content. However it does call for the Government to move towards greater clarity and consistency in content regulation and argues that the current arrangement, which split Tier 1 regulation between Ofcom and the BBC, risks implying to the public that there are no common standards of acceptability and quality which should be applied to all broadcast news reporting.
105. In his evidence to us Lord Currie of Marylebone, Chairman of Ofcom, said that he thought there were advantages to the BBC being regulated by an outside body (QQ 408 and 409). He went on to state that “On balance if we were pressed we would say it would make sense for us to do the regulatory role”(Q 416). The Commercial Radio Companies Association argued for Ofcom to be given this role. In its evidence to us it stated “Ofcom should apply any type of regulation which commonly applies to all broadcasters... External regulation of such matters will bring increased scrutiny, improve public confidence and deliver important cross-industry consistency in adjudications” (p 330).
106. We believe that that in order to secure clearly independent regulation and clarity for complainants, Ofcom should take final responsibility for BBC programme regulation. This would mean that the Ofcom Content Board would have the same regulatory responsibilities for BBC content as it has in respect of other terrestrial public service broadcasters.
107. This recommendation would mean that Ofcom would be responsible for adjudicating on appeals of complaints relating to the BBC’s output,

³⁷ http://www.ofcom.org.uk/about/csg/ocb/functions_role?a=87101.

including complains about accuracy. However, the BBC Board would be responsible for monitoring the accuracy of BBC output and putting in place measures to safeguard and improve the accuracy of BBC reports. As we noted in para 96, ensuring the accuracy of BBC reporting is a governance not a regulatory issue.

108. **A condition of Ofcom being given this new responsibility must be that the Ofcom Content Board is significantly strengthened.** At the moment the Content Board is a sub-committee of the main Ofcom Board. It does not have an independent budget or independent staff. In contrast, the Ofcom Consumer Panel was established by the Communications Act 2003 as an independent advisory panel. The Consumer Panel has a responsibility to understand consumer issues and concerns related to the communications sector. These include issues affecting rural consumers, older people, people with disabilities and those who are on low incomes or otherwise disadvantaged. The Consumer Panel operates at arms length from Ofcom and has an independent staff and budget. We believe that it is partly because the Consumer Panel has been given this status, and the Content Board has not, that Ofcom is widely perceived as a narrow economic regulator. **We therefore recommend that the Content Board should be given its own budget and staff with specific skills in the area of content regulation. It should be re-established as a semi-autonomous body in the mould of the Consumer Panel and should operate in a similarly open and transparent manner.** We recognise that this recommendation and the others in this section will require legislation.
109. As mentioned in para 93 we recommend that the BBC Board should have a complaints sub-committee chaired by a non-executive. **Ofcom's role should be to adjudicate on appeals against decisions on complaints made by the BBC Board. Ofcom's duties should be similar to those of a Court of Appeal. The BBC should respond to all complaints in the first instance. This could be secured by complainants first contacting the BBC, who would inform complainants of the opportunity to appeal to Ofcom if the BBC did not resolve the complaint in a fair and timely way. Similarly Ofcom would refer to the BBC all complaints about the BBC which it had received directly and would only take-up complaints if the complainant rejected the resolution offered by the BBC.** In order for this proposal to work it will be important for the BBC and Ofcom to ensure that their standards, codes and complaints procedures are compatible.
110. If this model is adopted then we believe that it will mark an improvement for the viewer and listener. Unlike now there will be a route for complainants to secure independent adjudication if they wish to appeal against BBC decisions on complaints. Unlike now it will be clear that all complaints should be directed first to the BBC and only on appeal to Ofcom and specifically the Ofcom Content Board which will have the skills and resources to take on this new duty.

Accountability for the use of public money

111. In his evidence Lord Currie of Marylebone was very clear that while he would support Ofcom taking on content regulatory duties in respect of the BBC "that is separate from holding the BBC to account for its use of public funds in the public interest. Those are two separate roles. I do not see that

latter role as ours” (Q 416). We agree with Lord Currie that Ofcom should not take on the role of holding the BBC to account for its use of public money. **We recommend that the BBC Board should be responsible for ensuring the BBC secures value for money and the Board should be accountable for its use of public money.** This addresses Lord Burns’s point that ensuring the licence fee is spent in a sensible way is particular to the BBC and would not fit neatly with Ofcom’s remit.

Audit of the BBC

112. Before the passage of the Communications Act 2003 the National Audit Office (NAO) did not carry out value for money reviews of BBC activities. Following the passage of the Act, the NAO is carrying out some reviews, at the invitation of the BBC, for the period up to the expiry of the current Royal Charter in 2006. However, in contrast to the arrangements that usually apply to public bodies, the Comptroller and Auditor General has neither a right of access to the BBC nor discretion to choose which topics or areas of activity to examine. The BBC is the only publicly funded body for which the NAO does not have the right to conduct a full and independently selected programme of Value for Money Reviews. The Government has said it recognises that increased powers of access could be passed to the NAO and that it will consider the matter again once it is clear how the current arrangement is working.³⁸
113. We took evidence from Sir John Bourn KCB, the Comptroller and Auditor General. He told us that the current programme of reviews was going well and the relationship between the NAO and the BBC had been co-operative (QQ 1319 and 1322). However, both he and the House of Commons Select Committee on Public Accounts considered that the current arrangements can only be seen as an interim measure which should lead to the Comptroller and Auditor General being given full rights of access to the BBC to carry out Value for Money Reviews and to report the results independently to Parliament (p 517 and Q 1306).
114. The Government is cautious about extending the NAO’s access because of the public’s belief that politicians should not be given increased powers over the BBC.³⁹ However, the Government’s research shows that the public is concerned that the BBC may not deliver value for money. Only 46 per cent of the public surveyed thought it delivered fairly good or very good value for money, compared to 33 per cent taking the opposite view.⁴⁰ The BBC should take note of these figures.
115. Giving the NAO the right to conduct a full programme of Value for Money reviews would not open the door to increased political interference in the BBC’s editorial or programming decisions. Rather it promises to assist materially the Board (Governors or Trust) in securing the value for money that licence fee payers rightly expect. We believe that NAO scrutiny will help the BBC combat perceptions of inefficiency and waste and increase public confidence that it has nothing to hide in its use of public money. The NAO

³⁸ Department for Culture, Media and Sport, Review of the BBC’s Royal Charter: *A strong BBC, independent of government*, March 2005, para. 5.61.

³⁹ *Ibid*, para. 5.61.

⁴⁰ Department for Culture, Media and Sport, Review of the BBC’s Royal Charter: *What you said about the BBC*. (July 2004).

has a long track record of examining cultural organisations without any question of editorial interference arising. Indeed, it already audits the BBC World Service and Sir Robert Phillis, previously Managing Director of the BBC World Service, told us that “We were subject to regular NAO reviews and I found them valuable... I do not believe the BBC should have anything to fear from scrutiny by the National Audit Office” (Q 1304).

116. Sir John Bourn assured us that there was no chance that the NAO would get involved in programming decisions if it were to audit the BBC “In no sense is it the idea, as it were, to put forward our own scheme of programmes, any more than in our current audit of the Arts Council we suggest that different operas should be shown at Covent Garden than the ones that are shown... most of our work develops around better management of assets, better procurement arrangements and a better analysis of human resource management and issues of that kind” (Q 1308).
117. Another reason why some observers may be hesitant about giving the NAO increased access to the BBC is because the NAO might stifle risk taking and innovation. However, Edward Leigh, Chairman of the Commons Public Accounts Committee, assured us that “the approach of the Committee of Public Accounts and the NAO is very much one of supporting well-managed risk taking and innovation” (p 517).
118. The NAO has the expertise necessary to properly assess whether the BBC is securing value for money in its use of public funds. The public is concerned about this. **We recommend that the NAO should have full right of access to the BBC and the power to conduct and independently select the subject of Value for Money Reviews. It should report the results to Parliament.** This does not mean the NAO will be responsible for the financial audit of the BBC and we endorse the current position whereby the BBC chooses the firm which conducts its annual financial audit.

CHAPTER 5: FUNDING

119. The BBC has been funded by the licence fee since 1923 when the first wireless licence was issued. In 2005 a colour television licence costs £126.50 and a black and white licence costs £42.00. Although only those people who own a television receiving device have to pay the licence fee it is important to remember that the fee funds all BBC public service activities including radio and on-line.
120. We believe that the licence fee system has been vital to building the strong and world renowned BBC of today. The reliability of the licence fee as a funding source, coupled with the fact that it makes the BBC independent of commercial considerations, has enabled the BBC to develop the programming and services on which its reputation is based. However, we believe that nothing, however well regarded, should be exempt from analysis and we therefore ask whether the licence fee remains the best method of funding the BBC. We also note that the last licence fee settlement (agreed in 2000) was 1.5 per cent above retail price inflation (RPI) annually and the BBC's most recent licence fee bid is RPI+2.3 per cent annually. **Licence fee settlements above RPI should only be agreed if there are exceptional reasons to justify the fact that they exceed the rate of inflation (see para 200 for our proposals as to how the BBC's current licence fee bid should be handled).** Many organisations are able to reduce growth in costs below the level of the RPI and there is no reason why the BBC should not be one of them.

The future of the licence fee

121. Lord Burns observed that as competition grows for viewers and fewer people watch the BBC, it will become more difficult to defend the licence fee (Q 244). Sir Christopher Bland stated in his evidence that once the BBC's audience reach falls to 50 per cent then a "universal licence fee is really hard to justify" (Q 1046).
122. These views were supported by Lord Macintosh of Haringey, who as Minister for Broadcasting at the time, stated that "support for the licence fee is in very considerable part based on the fact that a very high proportion of people watch the BBC and listen to BBC Radio and if in future that comes under threat from the growth of multi-channel television and radio, then the issue will have to be looked at again" (Q 128).
123. However the licence fee has the advantages of being simple and straightforward. It is a generally well understood and accepted method of funding the BBC. Revenue created by the licence fee is stable and secure, more predictable than other means of funding, and allows for long term planning of its public services by the BBC. In evidence to us, Ofcom stated that an effective, strong, and independent BBC, properly funded by the licence fee, should remain the "cornerstone" of PSB (pp 98–99).
124. The Government have stated that for the foreseeable future the licence fee will remain the best way of paying for the BBC. They propose that the licence fee will remain unchanged during the lifetime of the next Charter (Q 131). The BBC remains committed to the licence fee. It asserts that financial stability and freedom from commercial pressure allows it to invest in a wide range of quality and distinctive UK programming while maximising

public value.⁴¹ The licence fee is supported by all the terrestrial broadcasters and BSkyB. The House of Commons Committee stated that while the licence fee is “regressive and unfair on the disadvantaged in society, the evidence we received clearly indicates that there is no other viable and credible alternative which would ensure the current universality of access”.⁴²

The Government’s proposals for reviewing funding

125. The Government have proposed that during the course of the next Charter, towards the end of digital switchover, a review will be conducted to consider alternative funding methods for the BBC. (They also propose a second review to consider using public funding to support wider PSB including Channel 4’s long term position. We consider this in paras 142 to 154.)
126. Several of our witnesses opposed a review of BBC funding. The Public Voice coalition stated that an interim review would destabilise the BBC just when the Government expects it to lead digital switchover. The Producers Alliance for Cinema and Television (PACT), the UK trade association representing the commercial interests of independent media production companies, also rejected calls for a funding review. It stated that “The BBC should have security of funding for the period of the Charter to enable it to invest in new technology and content. Any review that resulted in reducing the licence fee could result in “short termism” on the part of the BBC management and bring uncertainty to the content supply markets” (p 251). The Broadcasting Entertainment Cinematographic and Theatre Union (BECTU) argued that a funding review would in effect create another Charter review in five years time (p 476). We note these concerns, but Lord McIntosh of Haringey assured us that it is the Government’s intention that such a review will not result in any change to the funding method of the BBC before 1 January 2017 (Q 131). The BBC in its response to the Green Paper agrees that it makes sense to review its funding. However, partly because of its role in building digital Britain, it urges the Government to postpone the review until after digital switchover is completed.⁴³

Alternatives to the licence fee

127. We considered three alternatives to the licence fee: advertising, subscription and grant-in-aid.

Advertising and subscription

128. We found little support for the introduction of advertising (or sponsorship) on the BBC. Michael Grade told us that the BBC could not maintain its present level of services if it had to compete for commercial revenue through advertising and sponsorship (or subscription) (Q 34). All witnesses from the commercial broadcasting sector opposed advertising on the BBC. In evidence to us, Charles Allen, the Chief Executive of ITV, asserted that BBC entry into the advertising market would depress the advertising revenues that support PSB on the commercial terrestrial channels (Q 490). Equity argued that the option for viewers to withdraw from BBC services by not subscribing

⁴¹ Review of the BBC’s Royal Charter: BBC Response to *A strong BBC, independent of government*, p. 36.

⁴² First Report of the House of Commons Culture, Media and Sport Committee: *A Public BBC*: Session 2004-05: HC 82-1 para 134.

⁴³ *Ibid*, p. 4.

“could lead to a significant fall in income unless the cost of subscription increased, which may in turn exclude those on low-incomes who would be priced out of the market.” Equity questioned how subscription finance could be applied to radio services (p 489).

129. However, there was some support for subscription funding of the BBC. Mark Armstrong, Professor of Economics at University College London, argued that state subsidy was no longer required to ensure provision of PSB. He pointed to the BBC’s own research that showed 80 per cent of its viewers would pay the licence fee as a subscription service (QQ 1066–1067). This position was supported by Professor Martin Cave, Director of the Centre for Management Under Regulation at Warwick University, who suggested that digital technology “would extend the possibility of subscription and ...[would] extend the possibility for a much more efficient and comprehensive collection of licence fees” (Q 1086).

Grant-in-aid

130. Direct grant-in-aid involves the Government giving public money directly to an organisation. Michael Grade told us that direct grant-in-aid would undermine the BBC’s independence (Q 34). However, we note that the BBC World Service, which enjoys a well deserved reputation for quality and impartiality, has been funded by a direct grant-in-aid from the Government since its creation in 1932. The Canadian Broadcasting Corporation (CBC) also receives direct Government funding on an annual basis. However its evidence indicates that annual funding is problematic. CBC’s funding is subject to changes in governmental priorities and is vulnerable to political swings. For example in the 1990’s it experienced a 29 per cent real decline in its annual Government grant following a change in Government priorities (p 482).
131. The experience of Canada suggests direct grant-in-aid funding, which is subject to short term changes, may force broadcasters to adopt more flexible and shorter-term employment and commercial contracts than would otherwise be the case. Programme development could also be undermined, with a focus on safe, tried and tested genres and formats, to the detriment of ambitious and innovative projects. Moreover, direct state funding would break the link between the licence fee payer and the BBC. The licence fee performs a valuable function in holding the BBC directly accountable to the public.
132. We support the Government’s proposal to review alternative funding methods for the BBC once the effects of digital switchover are clearer. **We recommend that the system of funding the BBC until 2017 should be through a licence fee. We support the Government’s decision to conduct an interim review of methods of funding but this should not be conducted until after the completion of analogue switch-off.**

Evaluating and setting the licence fee

133. When setting the licence fee the Government should consider the BBC’s PSB mandate, its efficiency and the BBC’s financial bid. The bid is determined by BBC management who are called upon to justify it in negotiations with the Government. Thus far, the BBC has made its licence fee bid without independent verification or external assessment. Currently, approval of the level of the licence fee, as negotiated by the Government and

the BBC, is conferred though the submission of an affirmative instrument to Parliament. However, Parliament has no effective powers of scrutiny or inquiry concerning the process of determining the level of the licence fee as proposed by the Government.

134. We believe that the process for granting BBC funding should be transparent and public. The House of Commons Committee thought so too.⁴⁴ The Government's response to the House of Commons Committee's recommendation said only that the forthcoming funding review will "take independent advice on a range of issues including the value for money of the BBC's existing services and will take account of the public's views".⁴⁵ In line with this commitment, the consultancy firm PKF have been appointed to provide the Government with expert advice on a range of issues including value for money of the BBC's existing services.
135. On our visit to Germany we took independent evidence from the KEF (Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten) an autonomous body that uses 16 independent auditors to assess the funding needs of the two German public service broadcast networks. Herr Rainer Conrad, the Chairman of the KEF, told us that he makes recommendations on the level of the licence fee at 4 yearly intervals. In 1994 the German Federal Constitutional Court ruled that setting the level of the licence fee should not be a political decision because this compromised the freedom of broadcasting. The Constitutional Court therefore ruled that the Bundesländer (federal states) had to accept KEF's determination. However, the Minister President of a federal state can reduce the fee if s/he believes citizens will not be able to afford it (Q 1531).
136. The AltmarkTrans judgement by the European Court of Justice in 2003 established that where enterprises receive public funding, the level of that funding must be clear in advance and must be objectively and transparently determined.⁴⁶ Funding should not exceed what is necessary to discharge public service obligations and, where provision is not the result of a public procurement tender, costs must be shown to be reasonable in comparison to a comparable commercial operation.
137. An independent assessment of the BBC's financial requirements would insulate the BBC from potential political interference in its finances by providing an objective and non-political assessment. It would also inform parliamentary debates on the affirmative instrument that Parliament is asked to approve each time the licence fee is changed. In Germany this assessment is carried out by independent auditors. One body which could effectively and efficiently carry out this responsibility would be the NAO. Among the advantages of using the NAO, as opposed to a private firm, are: the NAO does not charge the Government for the work it undertakes; the NAO has a great deal of experience of working with public sector bodies; and the NAO has the full confidence of Parliament and the public. In chapter three we outline why we believed the NAO should have full access to the BBC for

⁴⁴ First Report of the House of Commons Culture, Media and Sport Committee: *A Public BBC*: Session 2004-05: HC 82-1, para. 141.

⁴⁵ Department for Culture, Media and Sport, Government Response to the Culture, Media and Sport Select Committee Report on *'A public BBC'*, Session 2004-2005, p. 10.

⁴⁶ European Court of Justice, *Altmark Trans GmbH, Regierungspräsidium Magdeburg Vs Nahverkehrsgesellschaft Altmark GmbH* (Case C-280/00).

conducting value for money reviews. **We recommend that the criteria used in setting the level of the licence fee should be open and transparent. The role of the NAO should also be expanded to include responsibility for assessing the efficiency of the BBC and evaluating its funding requirements when the proposed level of the licence fee is set. It should be given the access necessary to do this. The NAO should advise Parliament accordingly.**

Collecting and enforcing the licence fee

138. The Broadcasting Act 1990 gave the BBC powers to undertake licence fee collection. The BBC has sub-contracted licence fee collection to the company TV Licensing. Collection costs totalled £150.8 million in 2003/04 and amounted to 5.4 per cent of total licence fee income. Since 1991/92 the cost of collection has remained broadly unchanged. However, significant reductions in enforcement costs have been secured: these fell from 12.7 per cent of total licence fee income in 1991/92 to 5.7 per cent of total licence fee income in 2003/04.⁴⁷ In “Building Public Value” the BBC proposes to reduce further licence fee collection costs by increasing the number of direct debit payments from 55 per cent to 80–90 per cent and through paperless on-line licensing.⁴⁸ However, in Germany we heard that the collection costs for the German licence fee were 2.08 per cent.⁴⁹ We asked the BBC whether the German and UK figures were comparable. The BBC explained that a direct comparison is not possible as costs are considered differently in Germany. The BBC was unable to supply us with comparative costs because it has not carried out a comparative study of licence fee collection costs for nearly a decade. However we were told “the time seems right to revisit this work so, over the course of the next year, we will undertake a further study of collection costs and evasion through Europe” (p 443). We are pleased that the BBC has been stimulated by our inquiry to undertake such a study. **We believe the costs of BBC licence fee collection and enforcement appear excessive and we recommend that the BBC continues to improve the cost efficiency of its licence fee collection and benchmarks its performance against other similar systems, such as that in Germany.**
139. Using television receiving equipment without the appropriate licence is a criminal offence subject to a maximum fine of £1,000. In 2003 a total of 96,872 people were prosecuted in the UK for licence fee evasion. No-one can be imprisoned solely for licence fee evasion. However, if an evasion fine is not paid, then magistrates have the power to impose a prison sentence. In England and Wales, 28 people were imprisoned in 2004 for non-payment of licence evasion fines (the average sentence was 14 days). In Scotland 18 people were imprisoned in 2004 (pp 476–458).
140. We believe that non-payment of the television licence fee should be dealt with in the first instance by fixed penalty notice. We do not believe that prison sentences should be used to punish fine evaders. In 2002 the

⁴⁷ TV Licensing Annual Review 2003/04, p. 3.

⁴⁸ Building Public Value, *Renewing the BBC for a digital world*, p. 21-22.

⁴⁹ As quoted in an extract of *Schon Gehalt* (the annual report, *Geschäftsbericht 2004*, of the GEZ, the *Gebühreneinzugszentrale der öffentlich-rechtlichen Rundfunkanstalten* - the German licence fee collection agency. See <http://www.gez.de/docs/gb2004.pdf>) kindly supplied to us by Professor Dr Eberle from the ZDF legal department in Germany.

Government stated that “Court time spent dealing with minor offending should be freed up to deal with more serious crimes”. With specific reference to the licence fee they said “We aim to pursue the extension of the fixed penalty system, and will consult on how this will work in practice”.⁵⁰ Three years after this statement was made the Secretary of State told us that this matter is still under consideration (Q 1850). We do not understand why it is taking so long for the Government to come to a decision on this issue.

141. We recommend that, at the earliest opportunity, non-payment of the licence fee should be decriminalised and brought into line with civil offences through the use of fixed penalty notices and civil court orders.

Funding PSB beyond the BBC

142. The BBC is not the only public service broadcaster. All terrestrial television broadcasters have public service obligations in return for the Government allocating valuable analogue spectrum at below market rates, as an indirect form of subsidy. These obligations include independent and regional production quotas and a requirement to broadcast news, current affairs, religion, arts, education and children’s programmes. However the value of the incentives provided by the Government is decreasing and it is therefore important to consider how to maintain a plurality of public service broadcasters in the future. Ofcom has suggested that if the BBC were to become the UK’s sole public service provider, there is a risk that audience tastes would be conditioned by the commercial majority rather than the public service minority; and that producers, writers, editors and other talent would be heavily influenced by the needs of the commercial sector alone.⁵¹
143. As audiences fragment across digital channels, commercial terrestrial broadcasters’ share of viewing will continue to fall. This reduces the value of their air-time to advertisers. We heard evidence from both ITV and Channel 4 that the value of their analogue spectrum, in relation to advertising revenues, will decline until analogue switch-off (QQ 476 and 263). Ofcom foresees a time when terrestrial commercial broadcasters reject public service obligations, and the accompanying incentives, and choose to become entirely commercial digital broadcasters instead. Lord Currie of Marylebone, told us that if diversity in PSB is not addressed now, then “in ten years’ time or even five years’ time we will have a monopoly provider of public service broadcasting” (Q 470).
144. This is why the Government proposes, towards the end of digital switchover, to review using public funding to support PSB beyond the BBC. There are three main ways in which public money could be given to support public service programming on advertising financed and commercial broadcasters:
- a) an enhanced licence fee;
 - b) a “top-sliced” or “contestable” licence fee;
 - c) through a Public Service Publisher.

⁵⁰ “Justice for All: Responses to the Auld and Halliday Reports” (2002), p. 70.

⁵¹ Review of the BBC’s Royal Charter: *Ofcom response to the Green Paper*, June 2005.

An enhanced licence fee

145. Ofcom recently proposed the introduction of an enhanced licence fee.⁵² This would mean increasing the cost of the licence fee and distributing a proportion of the new income to eligible commercial public service broadcasters and/or Channel 4. It would require the public to accept paying more for their licence fee while still receiving the same amount of PSB as they do at the moment. We believe that it is very unlikely that the UK public will accept paying more for their television licence for a range of programming comparable to that they now receive.

A “top-sliced” or “contestable” licence fee

146. If increasing the overall level of the licence fee is ruled out, then another option is a contestable or top-sliced licence fee. A contestable licence fee would mean the public paid the same amount to support PSB but different broadcasters, including the BBC, could bid for some of that money to support PSB projects. A top-sliced licence fee is similar but, as its name suggests, the majority of the fee would be reserved for the BBC with a proportion sliced off for other broadcasters. Michael Grade told us that “top-slicing” the licence fee would undermine the BBC’s accountability for use of the licence fee and weaken the link with the public (Q 35). Greg Dyke also cast doubt on this type of system. He referred to the danger to long-term planning of distributing money on a project-by-project basis (Q 398).
147. ITV supported the idea of competition for licence fee funding and suggested distribution via a “public service fund”, rather than by a stand alone body (p 119 and Q 489). The Satellite and Cable Broadcasters Group believed that “contestable public funding is the most appropriate way to achieve a plurality of top-quality providers of desirable content, and to ensure that the widest possible range of ideas and voices are made available to consumers” (p 237). Lord Burns preferred contestable funding to top-slicing (Q 244). He advocated a Public Service Broadcasting Commission that would coordinate direct funding of public service obligations from the licence fee (Q 226).
148. We are not persuaded by either a contestable or a top-sliced licence fee. We are concerned that they would weaken the BBC’s capability to produce a broad range of public broadcasting. There would no longer be one body accountable to the public for the use of the licence fee and this could weaken the public understanding of and engagement with PSB. We also note that the public value highly the lack of advertising on the BBC. If each public service broadcaster had only a proportion of the licence fee all would be likely to seek advertising to support its programming. This might result in the end of advertising-free broadcasting.

A Public Service Publisher

149. Ofcom has proposed a free-standing and independent “Public Service Publisher” to commission and produce public service programmes directly to a number of broadcasters from funds provided by the licence fee or by general taxation (estimated at £300 million—about 10 per cent of current licence fee revenue). The Government have invited Ofcom to prepare further and more detailed proposals on the possible form of a Public Service

⁵² Ibid.

Publisher. We think this is the right approach, more evidence is required about whether advertising funded broadcasters will cease to provide public service content and services and more evidence is required about possible new public service providers, some internet based, who might have a claim on public funding for provision of public service content.

150. Gavyn Davies expressed doubt that a Public Service Publisher could produce a viable alternative to the BBC with so little money. He told us that the result may be expensive programming shown to small minorities and ignored by the vast bulk of the audience (Q 396). The Satellite and Cable Broadcasters' Group argued that the commercial, multi-channel sector is already supplementing the four designated Public Service Broadcasters by providing specialist factual, history, nature, and art channels (although we note some of the programmes shown by these channels are BBC products). It rejects Ofcom's Public Service Publisher proposal, which it believes will simply provide another publicly funded competitor to the commercial sector (p 237).
151. We doubt that the Public Service Publisher will provide a sufficient degree of long term financial security for commercial PSB. We are concerned that it would incur significant transaction, legal and distribution costs with little return to the licence fee payer. Therefore, at this time we do not believe it is possible to support Ofcom's proposal.⁵³

A new set of incentives for PSB?

152. The plurality of PSB is currently supported by indirect subsidies and incentives for ITV, Channel 4 and Channel five. It may be possible to design a new set of incentives, fit for the digital age, to ensure these channels continue with their PSB activities. While in principle Channel 4 supported a measure of competition for the licence fee, its Chief Executive, Andy Duncan, told us that it would prefer the continuation of indirect, rather than direct subsidy from the Government (Q 274). Channel five supported this view and advocated a new compact between commercial broadcasters and the regulator (p 128).
153. Channel 4 asked for three main forms of indirect assistance to secure its future. First that the BBC should fund digital transition costs, which Channel 4 estimates to be £20 million per year for five years. Second, that Channel 4 should be guaranteed a suitably prominent position on "Electronic Programme Guides", which are likely to become the primary source of TV scheduling information. And third, ring-fenced funding of additional infrastructure costs to protect editorial independence (QQ 274, 275 and 263). Ofcom have agreed that consideration should be given to funding the one-off costs associated with Channel 4's digital roll out and is considering other aspects of Channel 4's proposed compact.⁵⁴
154. A plurality of terrestrial PSB providers is an important and valued feature of broadcasting in the UK. However, we are not convinced by the argument that ITV and Channel five need public help to continue screening a full range of programming including some public service content. We are more

⁵³ First Report of the House of Commons Culture, Media and Sport Committee: *A Public BBC*: Session 2004-05: HC 82-1, para. 120.

⁵⁴ Ofcom review of public service television broadcasting, Phase 3 – *Competition for quality*, p. 11.

sympathetic to the position of Channel 4 which is in a unique position as a not-for-profit public corporation with a distinctive remit set out in legislation. We believe that there is a case for a new set of indirect financial incentives to secure the future of Channel 4. These should neither require the public to pay more nor reduce the BBC's claim to all the licence fee funding. Accordingly, Ofcom should keep the funding and performance of Channel 4 under review.

CHAPTER 6: THE ROLE OF THE BBC

155. The BBC has a proud past and potentially a strong future as the foundation of Public Service Broadcasting (PSB) in the United Kingdom. But what is PSB and how can the BBC's contribution be assessed? The Green Paper attempts to define clearly the BBC's PSB role for the first time.
156. Clearly defining what is meant by PSB has proven difficult. In 1999 Gavyn Davies chaired a Government appointed panel on BBC funding. The panel could not "offer a tight new definition of PSB", but its members claimed they "knew it when we saw it".⁵⁵ The Communications Act 2003 provides a definition of PSB at section 264 based on the purposes of PSB and the sort of programming required to realise those purposes. In the Green Paper the Government propose a fuller set of public purposes to clarify and codify the BBC's roles. We consider three of these purposes in detail: reflecting the nations and regions; bringing the UK to the world and the world to the UK; and building digital Britain. We also consider the Government's proposals in the light of evidence to us which argued that the BBC should provide services clearly distinct from those provided by other broadcasters.

The Government's proposals

157. The first general manager of the BBC, John Reith, believed the BBC's role was to "inform, educate and entertain". These values have underpinned BBC services ever since. However, the Green Paper states that "in today's complex media market, where many other broadcasters are fulfilling some part of this very general remit to some degree, the BBC's role needs to be more clearly defined and more widely understood".⁵⁶ It proposes that "inform, educate and entertain" should continue to guide the BBC's mission but that these objectives should be achieved through a set of clearly defined public purposes towards which all BBC services should contribute. The 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 building digital Britain.
158. The Government's proposal builds on the BBC's own proposal that its performance should be evaluated in terms of five public purposes.⁵⁷ Mark Thompson, the Director-General of the BBC, told us that the Government's proposals improve on the BBC's (Q 40). Ofcom has also set out a new definition of PSB described in terms of "purposes and characteristics" which complements the definition in the Communications Act 2003.⁵⁸ Richard Hooper, the Deputy Chairman of Ofcom, told us that there was a high level of agreement between the BBC and Ofcom on the Green Paper's proposed definitions of the BBC's public purposes (Q 448).

⁵⁵ Department of Culture, Media and Sport, Gavyn Davies, Report of the Independent Review Panel: *Review of the Future Funding of the BBC* (1999).

⁵⁶ Department for Culture, Media and Sport, Review of the BBC's Royal Charter: *A strong BBC, independent of government*, March 2005, p. 20.

⁵⁷ Building Public Value, *Renewing the BBC for a digital world*, p. 12-14.

⁵⁸ Ofcom review of public service television broadcasting, Phase 3 – *Competition for quality*, p. 7.

159. The Government support Ofcom's suggestion that, in delivering the public purposes, BBC content should display certain characteristics. These are: high quality; challenging; original; innovative; and engaging. The Green Paper states that "All BBC services should strive to fulfil the full range of public purposes. Not every individual programme (or piece of internet content) will always fulfil such a purpose, although the vast majority should. However every programme should display at least one of the characteristics".⁵⁹
160. Many of our witnesses supported these moves to define the BBC's public purposes and service characteristics. Gavyn Davies told us "in trying to define the indefinable I think they have done quite a good job" (Q 387). The Public Voice coalition told us that "Previously it has been open to the BBC regime of the day to define the BBC's purpose to its own liking, without the transparency and accountability to the public that these purposes will institute" (p 165).
161. However, some witnesses criticised the Government's proposals on the grounds that any single BBC programme or service will only be required to meet one of the defined characteristics and would not *necessarily* have to meet any of the public purposes. The Satellite and Cable Broadcasters Group told us that "Had the proposed definitions and purposes been enshrined in the last Charter, they would not have prevented the BBC from making any of the programmes nor embarking on any of the enterprises that now come under strong criticism from many quarters including the BBC's supporters" (p 233). The Incorporated Society of British Advertisers said that further work was needed before the proposals would be effective in constraining the BBC from operating to its own ends. They therefore argued that all five programme characteristics should apply simultaneously (p 498).
162. We sympathise with these concerns. For example, we do not think that if a programme, or piece of internet content, is "engaging" this should be considered sufficient. However, it would be impossibly exacting to require every BBC programme to meet all of the Government's proposed characteristics. For example, no BBC radio or television channel could ever show a repeat if all programmes had to be "original". Nevertheless, we support the Green Paper's statement that "The set of purposes and characteristics should form the basis for a new, more rigorous system of regulation and performance measurement".⁶⁰
163. Some witnesses have proposed that distinctiveness should be a mandatory characteristic. The Satellite and Cable Broadcasters Group asserted that the only justification for the licence fee is provision of desirable public services that would not otherwise be available. It therefore argued that a requirement for distinctive programming "is the only safeguard that the private sector has against unwarranted publicly funded intervention, and the only protection the consumer has against wasteful duplication"(p 233). This view was shared by BSKyB (p 138).
164. We do not agree that all BBC services should be distinctively different from those offered by commercial broadcasters. This would confine the BBC to a very narrow range of programming with little popular appeal. The BBC must

⁵⁹ Department for Culture, Media and Sport, Review of the BBC's Royal Charter: *A strong BBC, independent of government*, March 2005, p. 28.

⁶⁰ Department for Culture, Media and Sport, Review of the BBC's Royal Charter: *A strong BBC, independent of government*, March 2005, para. 1.21.

appeal to all sectors of society because all pay for it. By mixing popular and distinctive programming the BBC can introduce large audiences to programmes they might not otherwise watch. We agree with the Voice of the Listener and Viewer who told us “Since every household is required to pay a television licence, the balance between popularity and distinctiveness in BBC programming is crucial” (p 160). We therefore welcome the Government’s assertion in the Green Paper that the BBC “should provide a wide range of programmes across every genre, trying to reach the widest range of possible audiences”.⁶¹

165. In order to help ensure that the BBC will maintain a wide variety of high quality programming, including popular and innovative programming, the BBC Board should strive to ensure that the BBC’s output as a whole fulfils the full range of public purposes. That does not mean that each and every BBC programme should necessarily be required to meet the full range of public purposes or programme characteristics. However, the BBC Board should aim to ensure that every BBC programme displays several of the desired characteristics.
166. While we do not think that all BBC services should necessarily be distinctive, we are worried by evidence that there can be adverse consequences when the BBC bids for imported television programmes against other UK terrestrial channels. There is questionable justification for the BBC bidding against another UK terrestrial channel for an imported programme or series. This may result in an inflated price for a programme that the UK public would see anyway. Channel five told us that “the BBC should not routinely bid up the prices of acquired programming (specifically Hollywood product), as it is a poor use of licence fee payers’ money and provides inappropriate competition to the commercial, advertising-supported broadcasters” (p 129). **We recommend that the BBC should be conscious of its public service obligations when deciding whether to bid for imported programmes, especially when another UK free-to-air channel is aiming to procure the same product.**
167. While we welcome the “new, more rigorous system of regulation and performance measurement” proposed in the Green Paper, any regulatory system ultimately depends on the judgement of those charged with implementing it. That is why we recommend a well functioning governance structure embodied in a BBC Board charged with securing the licence fee payers’ interests. The members of the Board should be committed to public service broadcasting and the combination of distinctiveness and popularity that implies. Gavyn Davies and his panel were right to say that public service broadcasting is hard to define (see para 156), that is why we believe a well functioning BBC Board, composed of effective members committed to a public service vocation for the BBC, is the best way to secure a future for the BBC commensurate with the achievements of its distinguished past.

Reflecting the nations and regions

168. One of the public purposes of the BBC is to “reflect the UK’s nations, regions and communities”. The Government defined this as “Reflecting and strengthening our cultural identity through original programming at local, regional and national level, on occasion bringing audiences together for

⁶¹ Ibid, para. 1.18.

shared experiences” and “making us aware of different cultures and alternative viewpoints, through content that reflects the lives of other people and other communities within the UK”.⁶²

169. The BBC has been criticised for being too London focused. Pat Loughrey, the Director of BBC Nations & Regions, told us that he spent his “entire 20 year career in the BBC railing against London-centricity, but the truth is that it is every bit as bad in each of the three [other] nations: Belfast, Cardiff and Glasgow dominate to far too great an extent” (Q 692).
170. There are two aspects to a greater BBC focus on the nations and regions. The first is more regional and national broadcasting and the second is more regional and national production.

Broadcasting in the nations and regions

171. In the past ITV1 was the dominant regional television provider, primarily because it was set up as a federal system of regionally-based broadcasters. However, in its evidence to us Ofcom stated that in respect of regional television “the BBC has increased its provision, particularly in the nations, while ITV1’s has fallen back” (p 99). Charles Allen told us that ITV continuing with certain regional programming, including regional news, is of questionable commercial viability (Q 478). This makes the BBC’s regional activities particularly important. However, Pat Loughrey told us that “to replace like-for-like the old ITV commitment might be inheriting a failed model” (Q 687). The Green Paper states that while the BBC should expand its contribution to regional programming, it should not simply compensate for reduced ITV regional output.⁶³
172. The BBC is committed to reflecting and supporting more fully the identity of local and regional communities. It proposes to strengthen this commitment by utilising new technology to create local television news services for around 60 areas across the UK. These will be more targeted than traditional regional broadcasting which was dictated by transmitter sites and local topography.⁶⁴
173. The BBC is also planning to extend local radio services in Bradford, Cheshire, Dorset and Somerset.⁶⁵ The Commercial Radio Companies Association told us that ITV’s de-regionalisation, and a consequential need for increased BBC regionalisation in television, is not echoed in radio. It argued that plurality in the provision of local public service broadcasting may be threatened by the BBC’s proposals (p 333).
174. The Newspaper Society, representing 1,300 regional and local titles, was also concerned about the possible effect of the BBC’s plans on the commercial local press. It suggested that the BBC has developed activities that directly compete with the regional press. It fears that the BBC will implement new services without “any systematic review of services development or market impact” or public consultation prior to approval of local services (p 510)
175. The BBC also proposes to develop a new strategic partnership with S4C, the Welsh language channel; to play a significant role in developing a new Gaelic

⁶² Department for Culture, Media and Sport, Review of the BBC’s Royal Charter: *A strong BBC, independent of government*, March 2005, p. 39.

⁶³ *Ibid*, p. 41.

⁶⁴ Review of the BBC’s Royal Charter: BBC Response to *A strong BBC, independent of government*, p.23.

⁶⁵ *Ibid*, p. 75.

Channel; and to continue its development of Irish and Ulster Scots programming.⁶⁶ We believe the BBC must do more to represent the nations of the United Kingdom. We will return to this topic in our next report.

176. We endorse the Government's proposal that strengthening broadcasting in the nations and regions should be a core public purpose of the BBC. We also welcome the BBC's commitment to use new digital technology to provide innovative local programming. However, it would be perverse if expansion of the BBC's activities were to drive out of business existing services that are valued by the local population. We therefore recommend that, as with all new BBC services (see para 224), new local services should be subject to rigorous independent market impact assessments and their remit should be defined in service licences. The BBC Board should define the terms of the service licences. New services should not be introduced if they are likely to damage the quality, diversity and plurality of choice available to the local population.

Production in the nations and regions

177. Following the passage of the Communications Act 2003, the Agreement between the Secretary of State and the BBC was amended. One important amendment requires the BBC to produce a significant proportion of its programmes (constituting a substantial proportion of production spend) outside the M25, at a wide range of different production centres, and in a variety of genres.
178. The BBC and Ofcom must agree quotas for out of London production; the amount, range and expenditure of network programmes made outside the M25; and the range of production centres outside the M25. The 2005 quotas require not less than 30 per cent of the qualifying spend, and 25 per cent of the qualifying hours, to be produced outside London. Ofcom has defined criteria to ensure that qualifying companies and employees are genuinely regional companies
179. ITV told us that it remains committed to sourcing 50 per cent of network programmes from outside London and that the BBC should sign up to a similar, if not greater, commitment (p 120). However, the Green Paper states that "Quotas are important, but they can be something of a blunt instrument to rely upon in ensuring that the BBC is playing its proper role in reflecting different UK regions and nations".⁶⁷
180. Mark Thompson told us that the London audiovisual sector is large enough to support a diverse range of independent production companies as well as in-house production at the BBC. However, in other UK cities he believed the BBC should collaborate with other broadcasters to support both in-house and independent production notably in the proposed creative "hub" in Manchester (Q 64). The BBC hopes the Manchester hub will be a new centre for research, development and independent production in the north of England.
181. Charles Allen explained that much money has been wasted through duplication of investment in studios, transmission and infrastructure. ITV

⁶⁶ Building Public Value, *Renewing the BBC for a digital world*, p. 22.

⁶⁷ Department for Culture, Media and Sport, *Review of the BBC's Royal Charter: A strong BBC, independent of government*, March 2005, p. 85.

has initiated discussions with the BBC on creative hubs where independent production companies, the BBC and ITV would work together (Q 480). Pat Loughrey agreed that the BBC and its commercial competitors should not be obsessed with competing with each other and instead should work together to maximise public value. The new Manchester hub would facilitate this (Q 729). However, it is not yet clear whether the BBC and ITV are advocating the same type of hub. **We recommend that the BBC, ITV and independent production companies should work together to create shared centres of regional excellence.**

182. The BBC also propose new programme commissioners based in Bristol (factual), Birmingham (daytime TV), and Glasgow (comedy and entertainment). During our visit to BBC Bristol, Pat Loughrey and Richard Klein, the BBC Commissioning Editor for Documentaries, outlined how commissioning editors in regional cities draw independent production companies to the area and stimulate regional production. John McVay, Chief Executive of PACT told us that the BBC should focus on commissioning programmes that develop the capacity of regional companies (Q 997). This he believed would build up creative capacity in the different hubs and allow production of both national and regional programmes (Q 1001).
183. We welcome the BBC's aim to devolve programme production and commissioning across the United Kingdom. We do not believe additional regional production quotas beyond the existing "out-of-London" quotas are necessary as long as the BBC keeps to the commitments it has made. However, we believe that devolution must secure value for money. The BBC's response to the Green Paper states that the new broadcasting centre in Manchester is dependent on the level of the next licence fee settlement. When launching its bid for the next licence fee settlement the BBC stated that its out-of-London strategy will cost an additional £50 million per annum to 2013. We find it hard to believe that there are no economies to be gained by moving staff out of London. We believe the move can only be justified if it can be shown that it will provide value for money to the licence fee payer. We will return to this matter in our next report.

Bringing the UK to the world and the world to the UK

184. The Government propose that the fifth public purpose for the BBC should be "Bringing the UK to the world and the world to the UK". We agree that the BBC should continue to provide high-quality international news coverage to a global audience. The BBC has a world wide reputation for accurate and objective reporting. It is admired and influential. It influences listeners and viewers, not by producing propaganda but by the very opposite: through its accuracy, objectivity and impartiality. In a world increasingly dominated by media channels with an all too obvious bias this is to be prized.
185. The BBC's Global News Division consists of the BBC World Service (a public service radio network that currently broadcasts in 42 languages), BBC World (a commercial television service that broadcasts in English), and the BBC's international websites. The World Service is funded by a grant-in-aid of £225 million (rising to £239 million in 2005/6) from the Foreign and Commonwealth Office (FCO). The Government state that there are two main issues concerning the future of the World Service. First, the range of

languages broadcast by the World Service; and second whether the World Service should broadcast TV services.⁶⁸

186. The FCO have commissioned a review of public diplomacy from Lord Carter of Coles for report later this year. We look forward to reading Lord Carter's conclusions concerning the World Service. We will also return to this topic in our second report.

The languages of the BBC World Service

187. The FCO and the BBC World Service agree which overseas audiences should be served and in which languages programmes should be broadcast (Lord McIntosh of Haringey, Q 163). The Government state that the 42 language services currently offered by the BBC World Service are more a "product of the World Service's historical development than a realistic assessment of the United Kingdom's role in the 21st century".⁶⁹ The World Service broadcasts in 16 languages spoken in countries formerly part of the Soviet Union, eight of which are now members of the European Union. The BBC's original rationale for these services was to further democracy and human rights. The Government now suggest that democracy and human rights concerns suggest a shift in BBC focus to the Middle East, the Far East and parts of Africa and the Indian subcontinent. But so far the World Service has not re-prioritised its services to serve these areas.
188. As measured against its international competitors, the World Service scores very highly on objectivity and trust. Nigel Chapman, Director of the BBC World Service, told us that this was central to its credibility. He stated that it aims "to have an impact with opinion formers" and that the World Service succeeds in most of the societies where the BBC measures its impact (Q 1406). The BBC states that the World Service will invest its "limited grant-in-aid resources where they are most needed and will therefore review the present portfolio of language services with "a view to significant change".⁷⁰
189. The World Service performs a vital role in providing impartial news and information with distinction and objectivity and thus is able to influence decision making abroad. We therefore support the Government's proposal that the resources of the World Service should respond to changing political, economic and social trends. **We recommend re-prioritisation of the World Service's activities should continue and we encourage the Foreign and Commonwealth Office to focus World Service resources where it judges there is most need.**

World service television

190. Re-prioritising the languages in which the World Service operates will help maximise its impact but the World Service should also respond to changing patterns of media consumption, in particular the importance of television.
191. We believe that given the popularity of television in the developed world, and its increasing popularity in the developing world, the World Service will

⁶⁸ Department for Culture, Media and Sport, Review of the BBC's Royal Charter: *A strong BBC, independent of government*, March 2005, p. 45.

⁶⁹ Ibid.

⁷⁰ Review of the BBC's Royal Charter: BBC Response to *A strong BBC, independent of government*, p. 24.

struggle to continue influencing world opinion unless it launches a television service in a range of languages. The case for an Arabic language channel is a notable instance.

192. Nigel Chapman described the BBC's Arabic Radio service as "a tremendous set of eyes and ears" for the BBC's listeners in the region (Q 1407). The BBC Arabic radio service has over 12 million listeners in the Middle East. However, 50 per cent of these listeners are in the relatively under developed markets of Sudan and Iraq. BBC penetration in more developed Arabic markets is low and it is in these regions where demand for a BBC Arabic TV service is highest (p 390). The BBC believes that providing television in Arabic is important and asserts that "being a radio and new media player will not get the job done" (Nigel Chapman, Q 1411). 2003 audience research, repeated in 2005, indicated strong demand for a BBC Arabic television service (p 390).
193. We believe that the opportunities and benefits of BBC World Service Television in a range of languages outweigh the financial costs. We think the case is particularly strong for an Arabic language television service. We note that as we go to press the BBC World Service has announced important changes to its services which at first sight seem to be broadly in line with our recommendations. This is something we will return to in our next report.

Building digital Britain

194. Digital technology brings with it significant potential benefits for the citizen as well as for the viewer and listener. As Lord Puttnam told us: "Digital technology provides the means for us to create a society in which the ability of all to participate in the democratic process is enhanced, in which access to learning, knowledge and skills are greatly increased and in which the competitiveness and productivity of our economy is transformed" (p 519). The Government propose that the BBC's sixth public purpose, for the duration of the next Charter, should be "Building Digital Britain". The Green Paper states that "the market alone will never deliver a fully digital Britain".⁷¹
195. But what sort of digital Britain does the Government envisage? The Green Paper focuses on changing the transmission technology used for radio and television from analogue to digital. However, the potential for new technology to change the way people access the media goes far beyond this. For example, an increasing number of broadband homes are using the internet to receive radio and television services through various techniques such as streamed audio and video, file sharing and file downloading. This type of internet access already provides a promising way to combine achievement of two distinct Government's policies—turning off analogue transmission of radio and television and promoting affordable and universal access to digital interactivity via the internet.
196. The Green Paper focuses on analogue switch-off and therefore so shall we. Analogue switch-off is a government policy. For many households the most cost effective way to get digital television will be from digital terrestrial signals but 27 per cent of UK households will be unable to get digital terrestrial services until the analogue terrestrial signal is switched off. The

⁷¹ Ibid, para. 2.9.

Government therefore state that they will “pursue digital switchover as the only way to ensure that the benefits of high quality, free-to-view digital television are available to all”.⁷² They intend the BBC to take a leading role in this process covering some switchover costs through the licence fee. In a speech to the Royal Television Society Cambridge Convention on Thursday 15 September 2005 Tessa Jowell announced subsidies for the elderly and disabled who might otherwise struggle with the costs of digital switchover. The Government intend that this support will be funded by the BBC through its licence fee.

197. Already, new BBC services have helped increase take-up of digital technology. Freeview, the BBC's joint venture with BSkyB and the US transmission firm Crown Castle, has been the main driver in the take up of digital terrestrial television. The BBC and the commercial radio industry jointly set up the Digital Radio Development Bureau and have played an important role in promoting take up of Digital Radio. The Government now propose that the BBC should promote digital radio to extend digital radio coverage to 90 per cent of the UK population. In television, the Government have taken up the BBC's offer to play a leading role in digital switchover and in the Switchco organisation (now called Digital UK). Digital UK will co-ordinate the technical process of switchover, play a leading role in the public information campaign about switchover and help establish and fund schemes to assist the most vulnerable consumers to switch to digital.⁷³
198. It is already clear that analogue switch-off will be very costly. Viewers and listeners will have to replace or adapt all their analogue television sets and video and audio recorders. Moreover, the costs to broadcasters of digitising their studio and transmission networks will be formidable. In its licence fee bid for the period 2007-13 the BBC's estimates of its own costs of completing the transition from analogue to digital are of the order of £1.64bn.⁷⁴ While many of these costs are associated with the BBC's internal plans for new services a significant proportion of the £1.64bn is money earmarked for fulfilling roles the Government have asked the BBC to undertake. These include taking a prominent role in Digital UK and being a major contributor to the marketing and communications activities linked to switchover as well as providing targeted help for the vulnerable and disadvantaged. These costs will be significant, for example when it launched its recent licence fee bid, the BBC stated that its role in Digital UK will cost £200m.
199. We support the Government's objective to bring the benefits of digital broadcasting to all UK households. However, there are three possible objections to the BBC playing a lead role in switchover. First, the implications for the BBC's political independence if it is charged with delivering a government policy. Second, the evidence that the wider broadcasting market does not trust the BBC to promote and deliver switchover in a neutral way. Third, if it is to cover some switchover costs the BBC argues that the licence fee may increase significantly which, in turn will disproportionately burden low income households.

⁷² Ibid.

⁷³ Ibid, p. 51.

⁷⁴ It is not clear from the BBC's estimates whether the costs identified are at 2005 prices.

200. The BBC should not be expected to cover external switchover costs as it is the licence fee payer who will really be paying. Switchover will already impose compulsory costs on some consumers who will need to obtain one or more set-top boxes or integrated digital televisions. The Government's updated cost benefit analysis report published in February 2005 showed quantifiable benefits to the UK economy from analogue switch-off of £1.1-£2.2 billion (in net present value terms).⁷⁵ The Government will be in direct receipt of the proceeds of the sale of analogue spectrum. Although the value of this spectrum will not be known until it is sold it is undoubtedly a very valuable asset. **Given the financial benefit that the Government will accrue we do not believe that the costs of promoting and co-ordinating digital switchover and providing targeted help for the vulnerable and disadvantaged should fall on the licence fee payer. Such costs should be covered by the Government (i.e. the general tax payer). Switchover is a Government policy which applies to, and affects, all broadcasters and all viewers and listeners.**
201. Digital terrestrial television is normally provided to UK viewers through Freeview. Compared to some other cable and satellite methods of providing digital television it has limited interactivity and functions. In its response to the Green Paper the BBC cites the digital terrestrial television network as its first priority in helping to create the conditions for analogue switch-off, although it is also seeking to develop, market and promote a free to view digital satellite service. We note that BSkyB are already doing this.
202. We received evidence from the BBC's digital competitors expressing concern that the BBC will push the Freeview platform above other platforms. Mr Simon Duffy, Chief Executive Officer for NTL, told us that while he recognised the role that Freeview has played in driving digital take up, it is an inherently limited technology which needs to be replaced in due course by something which is interactive and has much more capacity and flexibility (Q 669). Lisa Opie, Managing Director of Flextech-Telewest, was concerned that the BBC's public information campaign about digital television "should be platform agnostic". She stated that "the benefits that cable can bring in terms of greater degrees of interactivity, a richer technological platform, is very valuable to consumers and I would like to see the BBC continue to promote all platforms for digital. Pay, Sky and Cable provide a greater range of choice than Freeview does and therefore the message should be equally spread" (Q 663). BSkyB concurred stating that the BBC should "act in a technological and platform neutral manner in all of its switchover activities including information campaigns" (p 139).
203. We are struck by the disparity between the interactivity offered by digital terrestrial television and wired internet based services. Digital terrestrial broadcast services are considerably less versatile and interactive than are wired services. Moreover we note the BBC's high estimates of the cost of completing roll out of Digital Terrestrial services. These exceed the estimated cost of establishing Digital Satellite services by a factor of 12.5. We therefore recommend a review of the relative costs and benefits of delivering universal radio and television services throughout the UK using different delivery technologies: notably wired and wireless systems.

⁷⁵ DCMS/DTI – Cost Benefit Analysis of Digital Switchover – Feb 2005 - http://www.digitaltelevision.gov.uk/pdf_documents/publications/CBA_Feb05.pdf

204. The Government have not stipulated that the BBC's public information campaign should be platform neutral. However, the Green Paper does state that the BBC should work with other broadcasters, manufacturers and retailers to play a leading role, both directly and through Switchco (now Digital UK), in the delivery of reliable and impartial information about switchover.
205. We recommend that the BBC's public information campaigns on digital switchover be platform neutral and should educate the public on the different capabilities of the different digital platforms.

BBC research and development

206. We received evidence that the BBC is an important innovator and leader in testing and implementing new technologies beyond those involved in digital switchover. Lord Puttnam proposed that one of the BBC's core duties should be to develop and invest in skills which underpin a strong and vibrant creative economy. He suggested that the licence fee should be "venture capital" not just for the development of creativity but for the entire range of skills deployed across the audio-visual sector (p518). Equity agreed, stating that BBC also has "a responsibility to be at the forefront of testing and developing new technologies" (p 488).
207. David Youlton, the Chairman of the Digital Television Group, told us that the BBC's Research and Development (R&D) department has an international reputation as the "UK's NASA" underpinning British work on new image and production technology. He claimed that the BBC has "the collective memory and the largest knowledge base in the world" to work towards integrating new technologies across different platforms (Q 648). Mr Youlton told us that BBC R&D should not be sold off and should have an independent board to commercialise and generalise its work across all UK companies to maintain their competitive lead (Q 648).
208. The BBC responded to this evidence by telling us it does not propose to sell off BBC R&D and sees "a strong, vibrant and world class technology function as key to our ability to create a digital BBC". The BBC recently conducted a review of technology which recommended that the R&D Department should "come into the heart of the BBC" and be integrated with technology strategists in a new Technology Group (p 27).
209. We are confident that the BBC will continue to lead in technological innovation and in educating the public in new technology. **We recommend that the BBC should maintain a strong Research and Development Department.**

CHAPTER 7: THE BBC'S IMPACT ON THE MARKET

210. So far we have only referred to regulation of content. However, the BBC Governors and Ofcom currently also have a role in regulating the BBC's impact on the wider media market.
211. The BBC's activities can be divided into those which are publicly funded and those which are funded commercially. While it is only the commercial activities which are designed to compete with other companies for money, the existence of the BBC as a provider of diverse and high quality public services has a direct impact on the success of other broadcasters and thus on the diversity of services available.
212. The Office of Fair Trading (OFT) recognised this in its response to the Green Paper. It stated that the BBC can "produce outcomes that are uniquely damaging to effective competition and to commercially funded innovation on media markets, due to the BBC's unique scale, scope, status and ambition." The OFT went on to conclude that it is "crucial to ensure that all activities of the BBC, whether public or commercial are appropriately regulated, by objective and expert bodies, in a manner that takes account of its unique position".⁷⁶

Public service activities

213. During the course of our inquiry witnesses cited several examples where they believed the presence of publicly funded BBC activities crowded out commercial providers and discouraged diversity. For example Mark Wood, Chief Executive of ITN, suggested that the BBC's publicly funded online news presence had such a weight of resources at its disposal that no other provider had been able to compete. He stated that the BBC had discouraged entry to online news and consequently had inhibited innovation in online news provision and that, in spite of the quality of the BBC's provision, this had a negative impact on the consumer (Q 1365).
214. Adam Boulton, the political editor of Sky News, told us that effective competition was valuable to the BBC. He explained that if the BBC was not subject to effective competition its services might be of inferior range and quality: "the significant advances in television news so far as serving the public have not been driven by the BBC; they have been driven by competition... If you look back at the launch of breakfast television, for example, the BBC could have done that at any time... ITV decided to licence it and, lo and behold, the BBC suddenly decided they were going to do it" (Q 1212).
215. The fact that the launch of a BBC service might affect other providers in the market does not mean the BBC should not provide such a service. If the public will benefit then there may well be a good case for launching it. However, it is important that a set of checks and balances are in place to ensure that the BBC considers its impact on the broadcasting sector and adjusts its behaviour where appropriate.

⁷⁶ Office of Fair Trading response to the Department for Culture, Media and Sport, *BBC Charter Review Consultation*, 2nd June 2005.

216. In its response to the Green Paper the BBC acknowledged that in the past it had “been insufficiently sensitive to its potential negative impact on the wider market place”.⁷⁷ In *Building Public Value* the BBC stated that “The public, the government, the broadcast industry as a whole and the BBC’s many other stakeholders have a right to expect that public value should mean just that, and that the benefits of any existing or proposed new service should outweigh any disbenefits there may be”.⁷⁸ To this end the BBC proposes to introduce a Public Value Test which will be applied to all proposals for new services and also to significant changes in existing services. It also proposes that each new BBC service will be given a clearly defined remit set out in a service licence.⁷⁹ It is important to note that there are no plans to extend the Public Value Test to established BBC services and the Public Value Test will therefore not address any problems which arise either from established BBC services or from new ventures launched before the Public Value Test is implemented.
217. Evidence to us shows widespread support for the Public Value Test and for service licences providing they are administered fairly (Channel 4 Q 315, ITV p 116, ITN p 366). We consider them an important and encouraging step towards a BBC that considers the wider broadcasting market. Nevertheless we have some concerns about the way the BBC, and the Government, propose to implement the Public Value Test.

The Public Value Test

218. In *Building Public Value* the BBC states that the Public Value Test will evaluate three different types of value: the individual value (the benefit people will derive as individuals from a BBC service), the citizen value (the benefit that people derive from a BBC service as citizens, such as its contribution to a better informed democracy, higher educational standards or a more inclusive society) and the net economic value (the net benefit that the wider economy may derive from the BBC’s services). The Government welcome the BBC’s proposal to develop the Public Value Test. They state that “Only if the public value added by the service outweighs any negative market impact should the proposal be given further consideration”.⁸⁰
219. The BBC has proposed a range of methods for measuring each type of value. It proposes to measure net economic value using market impact analysis and industry modelling. The Government state that the market impact assessment should be conducted according to a standard formula agreed between Ofcom and the BBC Trust and should be conducted by Ofcom “in the case of a new service”.⁸¹ However, when the proposal is to extend an existing service the Government suggest that the BBC Trust could carry out the market impact assessment.
220. We question why the Government propose to treat applications for new services and applications for changes to existing services differently. In its response to the Green Paper Ofcom noted that “significant changes or

⁷⁷ Review of the BBC’s Royal Charter: BBC Response to *A strong BBC, independent of government*, p. 70.

⁷⁸ *Building Public Value, Renewing the BBC for a digital world*, p. 83.

⁷⁹ *Ibid*, p. 85.

⁸⁰ Department for Culture, Media and Sport, Review of the BBC’s Royal Charter: *A strong BBC, independent of government*, March 2005, para. 5.42.

⁸¹ *Ibid*, para.5.42.

repeated changes to existing services are not different in nature to new services, as to their impact on the market(s), competition and on predictability/certainty in the market... if they are treated differently, there is a risk that the objectives of the market impact assessment regime—namely ensuring that the BBC’s market impact is limited to an acceptable level—could be circumvented by simply reclassifying a new service as a change to an existing service”.⁸²

221. In its response to the Green Paper the BBC expressed serious concerns about Ofcom undertaking the market impact assessment, because “Ofcom may have a conflict of interest, or be perceived to have, in relation to the sectors it regulates.” The BBC therefore proposes that Ofcom and the BBC Trust should jointly commission market impact assessments from a third party.⁸³
222. We believe that the BBC’s concerns about Ofcom conducting the market impact assessment will prove to be groundless. Ofcom is the industry regulator not an interested party. Moreover, Ofcom already has regulatory responsibilities in respect of public service broadcasters (including some responsibilities for the BBC) and is responsible for reporting on public service broadcasters’ performance.
223. Nevertheless, if our recommendation in para 227 is adopted, a different problem will arise should Ofcom conduct market impact assessments. In para 227 we will argue that an aggrieved party should have the right to appeal to Ofcom if it believes that the BBC Board has not paid due regard to evidence (or there have been procedural irregularities) when conducting the Public Value Test. If this recommendation is adopted then it would be inappropriate for Ofcom to conduct a market impact assessment which forms part of the Public Value Test. For this reason, and this reason alone, we do not think that Ofcom should be responsible for carrying-out market impact assessments of new and extended BBC services.
224. We therefore recommend that all proposals for new BBC services, and significant changes to existing services, should be subjected to a Public Value Test. This must always include a market impact assessment commissioned from an independent third party. Where significant and well reasoned concerns about existing BBC services are raised, these services should also be subjected to a Public Value Test.

Appealing the result of the Public Value Test

225. The Green Paper states that the Secretary of State will only be able to veto the Trust’s recommendation for new and extended services if due process has not been observed. There will therefore be no option of appealing against a recommendation of the BBC Trust on substantive grounds—the only ground for appeal would be if the BBC had not observed due process in carrying out the Public Value Test.
226. Some witnesses objected to this. In its written evidence the Newspaper Society stated “the BBC Trust will decide whether new services should be permitted, even if found to have adverse effect upon competition. Ministerial approval and oversight are seemingly downgraded to ‘process’ observation” (p 510). In its response to the Green Paper the OFT stated “there will still be

⁸² Ibid, para. 3.21.

⁸³ Review of the BBC’s Royal Charter: BBC Response to *A strong BBC, independent of government*, pp. 70-71.

considerable scope for the exercise of discretion by the Trust when deciding whether to allow the BBC to launch a new service, and under what conditions, given the inherently subjective nature of the task. While this is to some degree inevitable, we would suggest that the exercise of this discretion should be subject to some form of external oversight, to enable third parties who may be unsatisfied by a decision by the Trust to seek redress”.⁸⁴

227. We believe there should be a right of appeal for an aggrieved party to Ofcom on matters of substance and/or procedure if it is considered that the BBC has not paid due regard to the evidence obtained through the Public Value Test. We also believe that the BBC Board should have a duty to publish its reasons for approving or rejecting a proposal by the BBC management. If the BBC has to make its reasoning public, its decision is likely to be more strongly evidence-based and the nature of the costs and benefits taken into account in the Public Value Test will be plain. This would also answer calls by some witnesses for approval of BBC services to be “a much more public process than now” (e.g. Charles Allen, ITV, Q 495).

A threshold for the Public Value Test?

228. The Government state that they want to consider whether the Public Value Test should set a threshold beyond which the market impact of a service might be deemed completely unacceptable—for instance if it risked foreclosing a new market or significantly lessening competition. In its response to the Green Paper the BBC noted this suggestion and undertook to consider it further but also stated that “the BBC is not yet convinced that it is either possible or desirable to introduce a hard and fast formula”.⁸⁵ We believe that unless there is a clearly defined threshold, beyond which the market impact of a service would be deemed unacceptable, then the market impact assessment could become a pointless exercise the results of which could easily be ignored. **We therefore recommend that if a market impact assessment indicates that the launch of a new BBC service will risk stifling a new market then the new service should not be launched.**

Cross-promotion

229. Several of our witnesses objected to the BBC cross-promoting its publicly funded services. For example ITN was concerned that “the BBC could use its cost-free cross-promotional power from television, radio and websites to promote short-code access numbers of its mobile services and thereby achieve an enormous marketing advantage over commercial competitors” (ITN/05-06/29).
230. In the Green Paper the Government state that they are aware of the concerns of the commercial sector and will commission research to assess the value to audiences of cross-promoting publicly funded services against the potential adverse market impact of such activity. However, the Government also state that there is a clear value to users in the BBC making known the range of

⁸⁴ Office of Fair Trading response to the Department for Culture, Media and Sport, *BBC Charter Review Consultation*, 2nd June 2005.

⁸⁵ Review of the BBC’s Royal Charter: BBC Response to *A strong BBC, independent of government*, p. 71

programmes and services available.⁸⁶ **We believe that there is value to the licence fee payer in being informed of services provided by the licence fee. However we agree with the Government that research on the value of cross promoting BBC publicly funded services should be commissioned and we recommend that the findings of that research should be made public. The BBC should take the research findings into account.**

Commercial activities

231. The Green Paper quotes research showing public support for the BBC making money to supplement the licence fee. 90 per cent of people surveyed agreed that “the BBC should raise as much money as it can from selling its programmes and other products”.⁸⁷ We too believe that it is desirable to realise commercial, as well as public value from the BBC’s assets.
232. However, the BBC is not like any other company in the market—it is a hybrid public/commercial organisation. The BBC’s commercial operations are on a large scale. Moreover, the BBC’s commercial activities may enjoy advantages not enjoyed by rivals such as lower profit targets, cross-promotion, and preferential access to BBC assets funded by the licence fee. The commercial activities of the BBC may therefore have adverse consequences for competition and a well functioning market. We are reminded of Isaiah Berlin’s aphorism: “Freedom for the pike is death for the minnow”. What may be good for the BBC’s bottom line may also be lethal for its competitors with unfortunate consequences for media diversity.
233. In the Green Paper the Government assert that the BBC should be encouraged to generate income through commercial activity. However, the Government also acknowledge that the BBC’s commercial operations are frequently criticised on three grounds. First that the commercial operations are not adequately aligned to the BBC’s PSB remit. Second, that there is too much cross-promotion of commercial services by public services. And third, that the BBC’s commercial businesses are not profitable by industry standards and might make more money for licence fee payers if they were sold or licensed to other operators.⁸⁸
234. To address these criticisms the Government propose four criteria against which each BBC commercial service should be assessed to establish whether or not they are appropriate:
- Fit with PSB purposes—does the activity either support or relate to PSB purposes?
 - Commercial efficiency—is BBC ownership the most efficient economic exploitation of the assets involved or might sale or licensing of assets provide better value for money for the licence fee payer?
 - BBC brand protection—is there a positive or negative implication for the BBC’s brand or values?

⁸⁶ Department for Culture, Media and Sport, Review of the BBC’s Royal Charter: *A strong BBC, independent of government*, March 2005, para. 8.47.

⁸⁷ Department for Culture, Media and Sport, Review of the BBC’s Royal Charter: *A strong BBC, independent of government*, March 2005, p. 99.

⁸⁸ *Ibid.*, para. 9.3.

- Market distortion—are BBC commercial services being sold or structured in a way that might give them unfair advantage over the competition?

235. In its response to the Green Paper the BBC agrees with the Government that these are the right criteria and that for the sake of transparency and certainty it should ensure that all its commercial activities meet these four criteria.⁸⁹
236. We support the introduction of these four criteria against which BBC commercial services be tested. They constitute a set of principles to govern the BBC's commercial activity. Together with attempts to define the principles underpinning the BBC's public service activities (see chapter six) they represent a move towards a clearer distinction between the BBC's two separate incarnations as a public service broadcaster and as a commercial company.

The fair trading regime

237. Currently the BBC's commercial services are, like any other commercial enterprise, subject to regulation by Ofcom, the OFT and the EU. In recognition of its special position as a publicly-funded organisation the BBC also voluntarily abides by a fair trading regime underpinned by its Fair Trading Commitment. This fair trading regime is currently approved and overseen by the Board of Governors. It sets out commitments to achieve fair competition, to avoid risking public funds through commercial activity, and to ensure BBC commercial activity is both commensurate with the BBC's PSB remit and reflects BBC values and purposes.
238. The Green Paper states that the "Fair Trading Commitment has proved controversial".⁹⁰ Our evidence certainly supports this statement. One of the most controversial features of the Fair Trading Commitment is its self regulating nature: the BBC Governors both define the Fair Trading Commitment and enforce it.
239. The Green Paper states that the Government would welcome views on whether the Fair Trading Commitment should continue in its current form, or whether it might be simpler to separate matters of internal BBC housekeeping from those of external regulation that could be left to Ofcom.⁹¹
240. This would mean the existence of two regimes. The first would be an internal compliance document governing how BBC staff should comply with the BBC's legal obligations in the field of competition and state aid law. The second would be a set of *ex ante* rules that Ofcom would be responsible for defining and enforcing. These would ensure that the BBC did not give undue preference to its commercial activities, did not cross-subsidise them from public funds or resources and had a duty to provide Ofcom with information and to give Ofcom prior notice of proposals for new, or significantly changed, activities.
241. The Advertising Association questioned whether the BBC had the skills to police its Fair Trading Regime. It suggested that if the BBC Trust were to

⁸⁹ Review of the BBC's Royal Charter: BBC Response to *A strong BBC, independent of government*, p. 89.

⁹⁰ Department for Culture, Media and Sport, Review of the BBC's Royal Charter: *A strong BBC, independent of government*, March 2005, para. 9.17.

⁹¹ *Ibid*, para. 9.18.

take on the Governors' Fair Trading role some of the Trustees would need specific competition expertise (p 462). Andy Duncan, the Chief Executive of Channel 4 (and formerly a member of the BBC's Executive Committee), told us that even though the current Governors are now performing their fair trading roles quite well "there need to be appropriate mechanisms put in place that do not mean as soon as the Charter is agreed they suddenly go back into expansionist mode over the next ten years" (Q 293).

242. We received evidence that Ofcom should be given responsibility for the regulation of the fair trading regime. Mr John Hambley, Chairman of the Satellite and Cable Broadcasters Group, told us that "even with current fair trading policy, the BBC is always judge and jury in its own cause and ...[based on the past experience of some of his members] the jury always seems to find for the BBC" (Q 889).
243. Regulation of fair trading should be seen to be carried out effectively by an independent body. We recommend that the BBC Fair Trading Commitment be revised so that matters of internal BBC housekeeping are separated from those of external regulation. Matters of external regulation should be the responsibility of Ofcom. However, in the spirit of light touch regulation, and respecting the BBC's editorial and journalistic independence, Ofcom should seek to work in partnership with the BBC to rectify problems and fair trading infringements. Financial penalties should be imposed only as a last resort.
244. In the Green Paper the Government also ask whether Ofcom should be required to grant approval to the BBC's internal rules if external regulation were handed to Ofcom. In its written evidence the Music Business Forum told us that Ofcom should scrutinise any internal fair trading rules "to give the necessary confidence to the BBC's competitors as to their probity" (p 506). Channel 4 endorsed this position (p 64). We agree. The internal rules governing the BBC's conduct have an important role to play and must be clear, transparent and have the confidence of the industry. **We therefore recommend that the BBC's fair trading rules should be subject to approval by Ofcom as the lead sectoral competition regulator.**
245. In order for both the above recommendations to work we recommend that the BBC should be required to provide information relevant to fair trading and competition matters to Ofcom on request. This should form part of the Fair Trading Commitment.

Separating commercial and public service activities

246. The BBC's Fair Trading Commitment includes a set of guidelines designed to ensure that the relationship between its commercial and public service activities are conducted at arm's length and that there is fair pricing and transparency in the dealings between the two parts of the BBC. This reflects European Union requirements as set out in the European Commission Communication on State Aid.⁹²
247. If our recommendations on regulation of fair trading are accepted there will be some independent scrutiny of this separation. However, evidence we have received has led us to believe that more should be done within the BBC to ensure that the separation is clear and transparent.

⁹² Commission Communication on the application of State aid rules to public service broadcasting - OJ C 320/5 15.11.2001, para. 49.

248. Channel 4 told us: “there needs to be clear transparency and separation between the BBC’s core public service activities and its commercial activities so that competitors can be confident there is no cross-subsidy”(p 64). In its response to the Green Paper the OFT stated that “the provision of [commercial] services by the BBC raises inevitable questions about whether they enjoy an unfair competitive advantage through their association with the BBC’s public service activities and this leads to an ongoing need to police the interface between the public and commercial services to avoid such issues arising”⁹³.
249. We recommend that the BBC Board should enforce strict separation between the management of commercial and public service activities within the BBC.

The creative archive

250. The BBC has a pool of assets created by generations of past public investment in the BBC. One such asset is its programme archive. This is a priceless asset which the BBC holds in trust for future generations of the public. The advent of digital technology has made it possible for this archive to be easily accessible to the public in a cost effective way. In Building Public Value the BBC states that it will launch a Creative Archive with free access for UK licence fee payers through broadband internet access.
251. The BBC plans to apply the Public Value Test (including a market impact assessment) to the Creative Archive but only after an 18 month trial phase due to start this autumn (i.e. pre-dating the next Charter). We received evidence which cautions against the BBC launching such a trial before a full Public Value Test. ITN, which operate a large video archive business, told us in written evidence that BBC trial services often continue unchecked after the trial has ended and that even the trial itself could have a serious market impact. ITN concluded that “The BBC should not be allowed to develop major new initiatives such as this without a licence, involving both a Public Value Test and market impact assessment” (p 370). ITN also told us that it should be possible to define a form of the Creative Archive project which serves the public and limits adverse commercial impact.
252. We believe that the Creative Archive project is a real opportunity for the citizen to reap the reward for years of investment in the BBC. In our opinion it is desirable that assets held by the BBC are utilised as fully as possible for non-commercial purposes although we recognise the need to do this in a way that does not unduly affect the market. We also recognize that the BBC is currently able to make money from selling rights to its archive. The more money the BBC makes from this sort of activity the less the licence fee payer has to pay. While we support the proposal to open up the archive for non-commercial purposes we hope the BBC will do this in a way that will preserve the commercial value of the archive.

⁹³ Office of Fair Trading response to the Department for Culture, Media and Sport, *BBC Charter Review Consultation*, 2nd June 2005.

CHAPTER 8: COMMISSIONING OF INDEPENDENT CONTENT

253. While the majority of BBC content is produced by BBC in-house staff some is bought from independent production companies. The BBC is in a unique position to invest in and support the independent production sector. However, in its response to the Green Paper the BBC says that in the past it has been slow to acknowledge the contribution of the independent sector.

Independent television production

254. The BBC has an obligation under the Communications Act 2003 to source no less than 25 per cent of its qualifying television programme hours from a range of independent producers. “Qualifying programmes” include all broadcasts that last more than two minutes except repeats and news and live programming.⁹⁴ Ofcom has the power to impose fines (up to a maximum of £250,000) for failure to meet this quota.⁹⁵ In 2004 the BBC exceeded the 25 per cent quota but it has failed to meet this quota in two out of the last three years. Mark Thompson admitted that in the past the 25 per cent quota was regarded as a ceiling as well as a floor by the BBC (Q 62).
255. Many of our witnesses agreed that an increase in independent commissioning at the BBC would benefit the industry and the quality of programming. Mark Thompson told us that “It is absolutely important from the point of view of the producers that the BBC should have a system which is fair to them. Also, it is in the interests of the licence payer that the licence fee investment should go to the best ideas and the best talent” (Q 61). John McVay of PACT told us that one of the strengths of the independent production industry is that “it brings price and creative competition to the programme supply market which overall ensures that you get better ideas on screen...” (Q 957). Lord Burns thought there needed to be “greater opportunity for people in the independent sector to be able to bid and get into the process of making programmes, either for television or for radio” (Q 256).
256. However, support for increased independent commissioning was not universal. BECTU argued against proposals to increase independent commissioning at the BBC and questioned “the all-but-spoken presumption that further realignment is necessary in favour of independents and against in-house production”. They stated that the in-house production base is undervalued, under-examined and under-appreciated in a debate “which seems to operate on terms set by the independents” (p 477). This was echoed by Equity (p 490). Dr Georgina Born, Fellow and Director of Studies in Social and Political Sciences at Emmanuel College, Cambridge, agreed. She asserted that “under present circumstances creativity, quality and innovation in content production are more likely to be secured by in-house than independent production”. She went on to argue that “no increase in the quota should be made until it can be demonstrated that the independent production sector supports high quality training, evidences good employment conditions and reliably sources innovative and high quality programming” (p 283).

⁹⁴ The Broadcasting (Independent Productions) Order 1991 Section 2, sub-sections 2a, 2b and 2c)

⁹⁵ Section 198 (5) of the Communications Act 2003.

257. The Government is considering two options for increasing independent production.⁹⁶ First, an increase in the BBC's existing statutory 25 per cent quota for independent television production. Second, the BBC's own plan to create a new "Window of Creative Competition" or "WOCC". The WOCC would mean that external and independent producers could compete against BBC in-house production for a further 25 per cent of the BBC's commissioning hours. The BBC state that it needs to retain 50 per cent in-house production as the point of "critical mass" for the organisation.
258. In its response to the Green Paper the BBC argues against an increase in the mandatory quota and for the WOCC to be given a chance. It states that "the future of the production sector is best secured through effective creative competition, rather than through stronger regulation".⁹⁷
259. Many of our other witnesses were against further mandatory quotas at this stage. The Creators' Rights Alliance, representing 85,000 freelance copyright and content providers, were concerned that any increase in quotas for independent production would partly be at the expense of freelancers employed by the BBC for in-house productions (p 483). PACT thought WOCC should be given a chance but stated that "If the WOCC fails to demonstrably establish a greater creative competition by the BBC Trust's second biennial review... a 50 per cent by value quota [should] be imposed" (p 253). David Frank, Managing Director of the independent production company RDF Media and a member of the PACT Council, went further saying "In an ideal world we will move to a system where there is no guarantee for in-house production... The commissioning group at the BBC should just be buying the best ideas that are available in the market..." (Q 962). Channel 4 agreed that the BBC should be given the opportunity to make the WOCC work, before increases in the quota are considered (p 67).

Small production companies

260. There is some concern about how to ensure that all independent production companies benefit from the BBC opening up its commissioning process. BECTU told us that the independent sector is dominated by the largest 5 per cent of companies which make 80 per cent of the programmes (p 477). Dr Georgina Born raised concerns over the potential domination of WOCC by large independent companies which would pursue profitability over PSB (p 279). She told us that a small number of large internationally orientated companies "wield considerable power with the broadcasters, and are able to set the terms and to operate with relatively light oversight and controls. As large businesses, they have become increasingly concerned with extending and securing their markets, resulting in a more commercial orientation and more risk-averse behaviour". She went on to recommend that the definition of the independent sector should be tightened "so as to exclude those independents that have achieved substantial scale, while regulatory interventions should be considered that nurture the growth of new and small independents, supporting their access to major commissions" (p 280).

⁹⁶ Department for Culture, Media and Sport, Review of the BBC's Royal Charter: *A strong BBC, independent of government*, March 2005, p. 7.

⁹⁷ Review of the BBC's Royal Charter: BBC Response to *A strong BBC, independent of government*, p. 86.

What is an independent producer?

261. To qualify as an independent company in the eyes of the BBC a producer must not be more than 25 per cent owned by a broadcaster, or itself have a shareholding greater than 25 per cent in a broadcaster.⁹⁸ We note that the European Union is currently in the process of reviewing the Television Without Frontiers Directive and in the course of that review is considering the definition of “independent producer”.
262. Andrew Zein, Chairman of PACT, thought the BBC’s schedule should be open to all suppliers, including independent producers, ITV, or external US and European producers (Q 960). ITV believed that the definition of “independent producer” should include any producer with no ownership ties to the BBC to qualify. It stated that this would produce a simple and consistent system, bringing non-qualifying producers within the scope of the statutory quota and the BBC’s Code of Practice (p 120).

Regulation of the WOCC

263. If the WOCC is to be implemented then it is necessary to consider how it will be regulated. Some witnesses have suggested that it will be hard for independent producers to have confidence that the BBC is operating the WOCC fairly when BBC commissioners work closely with the in-house producers who compete against external producers for the commissioners’ attention and for WOCC contracts. PACT explained that historically the BBC has “maintained a commissioning structure that was aligned to in-house production. There have been sustained and widespread concerns that commissioning was both undemocratic and opaque, with ideas submitted to the BBC from outside producers not having an equal chance”. PACT therefore applaud the statement in Building Public Value that the BBC will aim to commission the best programmes regardless of who supplies them (p 252).
264. PACT asserted that the BBC should ensure transparent competition by ensuring that in-house and external commissions are on the same tariff and terms and should share more audience information with external suppliers (p 253). The BBC has proposed the development of a “Network Centre” for the main genre commissioners separate from the BBC production departments. Mark Thompson told us that this would create fewer but more empowered commissioners with clearer lines of responsibility (Q 61). PACT supported the separation of in-house production departments from commissioners and controllers, which it believes will improve communication between BBC Commissioning and between external suppliers (p 252).
265. The BBC has argued both that Ofcom’s current powers enable it to adequately evaluate the commissioning process and that the BBC itself should be ultimately responsible for ensuring the WOCC’s success.⁹⁹ PACT suggested that the Government’s proposed BBC Trust should have a duty to publish an independent report on the performance of the WOCC every two years. John McVay suggested that this report should focus on how

⁹⁸ The Broadcasting (Independent Productions) Order 1991 order sets out the definition of an independent producer. The Broadcasting (Independent Productions) (Amendment) Order 1995 increased the shareholding percentages from 15% to 25%.

⁹⁹ Review of the BBC’s Royal Charter: BBC Response to *A strong BBC, independent of government*, p. 85.

competitive the process has been and the fairness of commissioning (Q 967). If our governance model is adopted then the BBC Board should be given this responsibility. Lord Macintosh of Haringey told us that while the Government supported the objectives of the WOCC it would not be appropriate to specify how it should be managed by the BBC (Q 194).

266. We support the proposal for the WOCC. We believe that in operating the WOCC the BBC should keep two objectives in mind: stimulating greater competition between the BBC and external producers in order to secure the best programming for licence fee payers, and achieving greater value for money for licence fee payers. The WOCC should open up competition to any supplier, whether the BBC, an independent production company or another broadcaster.
267. We believe that the BBC's proposals have the potential to increase investment in the independent production sector without recourse to higher quotas. **The management of WOCC should be the responsibility of the BBC. The BBC Board should have a duty to monitor it carefully and to publish a bi-annual report on its operation. We recommend that the BBC should set indicative targets within the WOCC for sourcing from small and regional companies.**

Independent radio production

268. The BBC has a voluntary 10 per cent target for independent radio production and also defines the genres which are classed as "eligible" for independent production. The Green Paper states that in 2003/04, approximately 12 per cent of eligible radio hours came from independent production companies.¹⁰⁰ Following the Content Supply Review in December 2004, the BBC will extend the 10 per cent quota to cover the newly eligible genres of sport, radio in the nations and digital radio. The BBC has also established a Programme Development Fund to support the development of creative ideas from independent radio producers.
269. The Radio Independents Group further stated that the BBC's use of "eligible hours" for radio production is misleading and that measured as a percentage of total programme output, the independent sector produces only 6 per cent of the BBC's radio programmes. To strengthen the position of independent radio within the BBC, it advocated that the BBC's code of practice should include an "Independents Executive" to champion the sector; and a BBC commitment to support development of the independent radio production sector (pp 524–526).
270. The Voice of the Listener and Viewer stated that "BBC Radio is without rival in achieving its public purposes and also provides a unique platform for commissioning new music and creative writing" (p 161). The Music Business Forum thought that high quality radio production can best be maintained by the BBC's continued commitment to training and the broad development of skills in the independent sector (pp 504-509).
271. The Green Paper states that the BBC is the only significant purchaser of independently produced radio material and that therefore Government

¹⁰⁰ Department for Culture, Media and Sport, Review of the BBC's Royal Charter: *A strong BBC, independent of government*, March 2005, para. 7.18.

intervention to create a competitive market may not be possible.¹⁰¹ However, PACT argues that the development of digital radio has increased opportunities for independent companies to provide content and therefore the 10 per cent voluntary quota for BBC radio should become a 25 per cent mandatory quota (Q 980). This is supported by the Radio Independents Group which proposed a window of creative competition for a further 25 per cent of radio production (p 525).

272. The Music Business Forum stated that the BBC's role as a commissioner of music is extremely important to the UK's cultural diversity and that as a public service broadcaster it should foster and promote new and innovative musical talent. To perform this role it argued that the BBC must retain a strong in-house radio production base, to allow for a range of creative and risk taking programmes. It believed that there will be some music genres in which the independent sector is unwilling to invest and that the licence fee should be "venture capital for creativity" (pp 504–509).
273. A mandatory quota for television production has strengthened the independent sector and provided stability and security for established and emerging companies. We believe that the BBC should continue to invest in independent radio production, but to secure growth in the sector further reforms are needed. **We therefore recommend that the 10 per cent voluntary quota for independent radio production should be made mandatory. The BBC should consider the 10 per cent quota as a floor and not a ceiling and should operate a competitive commissioning process to secure the best programming available.**

Independent online production

274. The Green Paper refers to BBC Online as an increasingly important and trusted source of information.¹⁰² The Graf Review in 2003 recommended that the BBC set a target of at least 25 per cent for online content (excluding news) supplied by external or independent suppliers.¹⁰³ Following this recommendation the BBC committed itself voluntarily to sourcing 25 per cent (by value) of its online content and services (excluding news) from external suppliers which it hopes to achieve by 2006/07.¹⁰⁴ It is impossible for us to know whether this is a realistic target as the New Media department at the BBC has not previously had to report how much of its content is produced externally. However, the BBC's data shows that only 14 per cent of eligible new media funding has been spent previously on external or independent production (p 29).
275. The British Internet Publishers' Association (BIPA) stated that while many of the BBC's services on the internet are proper extensions of its traditional broadcasting activities, many are much more akin to publishing. They believe that the BBC enters and competes in areas already well served by commercial publishers and therefore impacts adversely on the market for independent online content producers. They told us that "To date there appears to have been insufficient effort taken by the BBC to ensure content is

¹⁰¹ Ibid, para. 7.20.

¹⁰² Department for Culture, Media and Sport, Review of the BBC's Royal Charter: *A strong BBC, independent of government*, March 2005, p. 12.

¹⁰³ *Report of the Independent Review of BBC Online* by Phillip Graf, 2004, p. 12, Para 2.2.

¹⁰⁴ *BBC Content Supply Review*, 2004, para. 5.1.

always innovative and distinctive which often leads to accusations of ...the replication of existing commercial provision". BIPA stated that the new Charter should impose a mandatory quota of at least 25 per cent of all commissioned internet content (pp 463–474).

276. The BBC has established a dominant position within the UK news and information sector of the online industry. It thus has a responsibility to invest public money not only to produce the best service, but also to support the economic strength and cultural diversity of the UK. **We therefore recommend a 25 per cent independent production quota for BBC's Online commissions (excluding news).** Ofcom do not have powers to regulate the internet and Lord Currie of Marylebone told us that even if Parliament gave Ofcom such powers it is not clear that they would be able to do so (Q 457). It is therefore the case that the BBC Board will have to be responsible for the self regulation of this quota. The BBC Board therefore will have to be responsible for ensuring that the BBC meets this quota. To ensure that wider industry has confidence in the process **we recommend that the BBC Board have a duty to secure fulfilment of the online independent production quota, to monitor commissioning of independent online content and to report bi-annually.**

The UK film industry

277. In the Green Paper the Government propose that the BBC should devise a film investment strategy to ensure that the best UK films are shown to a wider television audience. They also state that the BBC's film strategy should reflect other aspects of BBC strategy including the commitment to original content and the UK's cultural identity.¹⁰⁵ In its response to the Green Paper the BBC stated that it will "continue to invest both in the production of UK films and the acquisition of quality UK films as part of its commitment to investment in UK talent". The BBC is also conducting an analysis of the level and value of its investment in original film production prior to publishing a film strategy.¹⁰⁶
278. The UK Film Council stated that the current level of investment by the BBC in UK film is not commensurate with its position as the nation's leading public service broadcaster (p 532). It recommends that the BBC work in partnership with the UK film industry to pursue shared objectives. PACT agreed and asserted that the BBC should more explicitly recognise its obligation to support British film talent and should commit to a significantly larger investment in new film production. PACT proposed that the BBC's annual film strategy should publish details of current and planned expenditure on US films compared to UK films, the amount invested via BBC Films and define a commitment to spend 50 per cent of BBC's film budget on British films (p 249).
279. One of the proposed public purposes for the BBC is to stimulate creativity and cultural excellence. We recommend that an explicit part of this remit should be to do what it can to support British film but without compromising the objective of providing licence fee payers with the best programmes.

¹⁰⁵ Department for Culture, Media and Sport, Review of the BBC's Royal Charter: *A strong BBC, independent of government*, March 2005, p. 38.

¹⁰⁶ Review of the BBC's Royal Charter: BBC Response to *A strong BBC, independent of government*, p. 34.

CHAPTER 9: SUMMARY OF RECOMMENDATIONS

Safeguarding the independence of the BBC

280. We do not believe that the Government's proposals in the Green Paper will reduce the BBC's vulnerability to political pressure. We therefore recommend that the Government adopt our recommendations so as to secure a strong BBC, truly independent of Government. (para 32)
281. We believe it is vital that the process for agreeing the constitution of the BBC is open, transparent and not in the hands of any one political party. Unfortunately the process for agreeing a Royal Charter satisfies none of these criteria. We recommend that the BBC be established by statute so that its constitution is subject to parliamentary scrutiny. We urge the Government to reconsider its proposal to persist with a Royal Charter. (para 42)
282. We recommend that a short interim Charter be granted to the BBC while legislation is being prepared. It should not be possible to amend the agreement between the BBC and the Secretary of State without approval of both Houses of Parliament. In addition, if it is necessary to grant another Charter while legislation is being prepared, the Government should undertake that the Charter will not be amended without the approval of both Houses of Parliament. (para 43)
283. The BBC should take measures to ensure that the Nolan principles of standards in public life are strictly observed throughout the BBC. Those responsible for BBC programming should stand down from reporting on an issue if they have a direct conflict of interest. They should be required to publicly declare relevant interests that could be reasonably perceived to influence their reporting. (para 29)
284. We recommend that a permanent House of Lords Select Committee on Broadcasting and Communications be established. (para 44)

Governance and regulation of content

285. We recommend that there should be one Chairman of the BBC, i.e. the Chairman of the BBC Board. The management committee (called the executive board in the Green Paper) should be chaired by the Director-General. (para 80)
286. There should be no non-executive members on the BBC's management committee. (para 83)
287. The chairman of the BBC should be chosen on the basis of a recommendation by a truly independent panel. To this end we recommend that there be a duty on the Secretary of State to appoint a selection panel with a majority of non-political members and with a balance between its members who have explicit political allegiances. The panel should be chaired by a non-political member who is not a civil servant. This panel should operate according to Nolan principles and should recommend a short list of one to the Prime Minister. (para 88)
288. Other members of the BBC Board (or the BBC Trust in the Government's model) should be appointed in a similar manner to that described above with consultation of the BBC Chairman. (para 89)

289. An effective separation between governance and regulation can only be realised if the two roles are carried out by clearly distinct bodies. Neither the licence fee payer nor the BBC's competitors will have full confidence in a regulatory body unless it is quite separate from the BBC itself. (para 74)

A new BBC Board

290. We propose a unitary BBC board, named the BBC Board, responsible for governing the BBC in accordance with best corporate governance practice. This board should see itself as responsible to the licence fee payer. (para 92)
291. The BBC Board should have a majority of non-executives and a non-executive Chairman who would be the Chairman of the BBC. The Director-General, Deputy Director-General and the Director of Finance should all be members. The non-executive members should perform a wide range of governance functions such as chairing the remuneration, appointments, audit, standards and complaints committees. (para 93)
292. The BBC Board should sit above a management committee of senior executives which should be chaired by the Director-General. The appointments committee should make recommendations to the Board for the appointment of the Director-General. (para 94)
293. It is vital that the skills of the Board members go beyond financial and managerial qualifications. Members of the Board should represent a range of experience from across public life, business, the professions and civil society. We do not believe that any Board member should have duties to represent a particular constituency or interest group. The aim of the selection process should be to find the best members irrespective of where they come from. Members of the Board should be the best people for the job from across the United Kingdom. We would expect the Board between them to have experience and knowledge of the nations and regions of the United Kingdom. (para 99)

The role of Ofcom

294. In order to secure clearly independent regulation and clarity for complainants, Ofcom should take final responsibility for BBC programme regulation. This would mean that the Ofcom Content Board would have the same regulatory responsibilities for BBC content as it has in respect of other terrestrial public service broadcasters. (para 106)
295. A condition of Ofcom being given this new responsibility must be that the Ofcom Content Board is significantly strengthened. We therefore recommend that the Content Board should be given its own budget and staff with specific skills in the area of content regulation. It should be re-established as a semi-autonomous body and should operate in an open and transparent manner. (para 108)
296. Ofcom's role should be to adjudicate on appeals against decisions on complaints made by the BBC Board. Ofcom's duties should be similar to those of a Court of Appeal. The BBC should respond to all complaints in the first instance. This could be secured by complainants first contacting the BBC, who would inform complainants of the opportunity to appeal to Ofcom if the BBC did not resolve the complaint in a fair and timely way. Similarly Ofcom would refer to the BBC all complaints about the BBC

which it had received directly and would only take-up complaints if the complainant rejected the resolution offered by the BBC. (para 109)

Securing value for money

297. The BBC Board should be responsible for ensuring the BBC secures value for money and the Board should be accountable for its use of public money. (para 111)
298. The NAO should have full right of access to the BBC and the power to conduct and independently select the subject of Value for Money Reviews. It should report the results to Parliament. (para 118)

Funding

299. The system of funding the BBC until 2017 should be through a licence fee. We support the Government's decision to conduct an interim review of methods of funding but this should not be conducted until after the completion of analogue switch-off. (para 132)
300. Licence fee settlements above RPI should only be agreed if there are exceptional reasons to justify the fact that they exceed the rate of inflation. (para 120)
301. Given the substantial financial benefit that the Government will accrue from analogue switch-off we do not believe that the costs of promoting and co-ordinating digital switchover and providing targeted help for the vulnerable and disadvantaged should fall on the licence fee payer. Such costs should be covered by the Government (i.e. the general tax payer) because switchover is a Government policy which applies to, and affects, all broadcasters and all viewers and listeners. (para 200)
302. The criteria used in setting the level of the licence fee should be open and transparent. The role of the NAO should also be expanded to include responsibility for assessing the efficiency of the BBC and evaluating its funding requirements when the proposed level of the licence fee is set. It should be given the access necessary to do this. The NAO should advise Parliament accordingly. (para 137)
303. The costs of BBC licence fee collection and enforcement appear excessive and we recommend that the BBC continues to improve the cost efficiency of its licence fee collection and benchmarks its performance against other similar systems, such as that in Germany. (para 138)
304. At the earliest opportunity, non-payment of the licence fee should be decriminalised and brought into line with civil offences through the use of fixed penalty notices and civil court orders. (para 141)

The role of the BBC

305. In order to help ensure that the BBC will maintain a wide variety of high quality programming, including popular and innovative programming, the BBC Board should strive to ensure that the BBC's output as a whole fulfils the full range of public purposes. That does not mean that each and every BBC programme should necessarily be required to meet the full range of public purposes or programme characteristics. However, the BBC Board should aim to ensure that every BBC programme displays several of the desired characteristics. (para 165)

306. The BBC should be conscious of its public service obligations when deciding whether to bid for imported programmes, especially when another UK free-to-air channel is aiming to procure the same product. (para 166)
307. We endorse the Government's proposal that strengthening broadcasting in the nations and regions should be a core public purpose of the BBC. We also welcome the BBC's commitment to use new digital technology to provide innovative local programming. However, it would be perverse if expansion of the BBC's activities were to drive out of business existing services that are valued by the local population. We therefore recommend that, as with all new BBC services, new local services should be subject to rigorous independent market impact assessments and their remit should be defined in service licences. The BBC Board should define the terms of the service licences. New services should not be introduced if their effect is likely to damage the quality, diversity and plurality of choice available to the local population. (para 176)
308. We recommend that the BBC, ITV and independent production companies should work together to create shared centres of regional excellence. (para 181)
309. We welcome the BBC's aim to devolve programme production and commissioning across the United Kingdom. We do not believe additional regional production quotas beyond the existing "out-of-London" quotas are necessary as long as the BBC keeps to the commitments it has made. (para 183)
310. We recommend re-prioritisation of the World Service's activities should continue and we encourage the Foreign and Commonwealth Office to focus World Service resources where it judges there is most need. (para 189)
311. The opportunities and benefits of BBC World Service Television in a range of languages outweigh the financial costs. We think the case is particularly strong for an Arabic language television service. (para 193)
312. The BBC's public information campaigns on digital switchover should be platform neutral and should educate the public on the different capabilities of the different digital platforms. (para 205)
313. The BBC should maintain a strong Research and Development Department. (para 209)

The BBC's impact on the market

314. All proposals for new BBC services, and significant changes to existing services, should be subjected to a Public Value Test. This must always include a market impact assessment commissioned from an independent third party. Where significant and well reasoned concerns about existing BBC services are raised, these services should also be subjected to a Public Value Test. (para 224)
315. We believe there should be a right of appeal for an aggrieved party to Ofcom on matters of substance and/or procedure if it is considered that the BBC has not paid due regard to the evidence obtained through the Public Value Test. We also believe that the BBC Board should have a duty to publish its reasons for approving or rejecting a proposal by the BBC management. (para 227)

316. If a market impact assessment indicates that the launch of a new BBC service will risk stifling a new market then the new service should not be launched. (para 228)
317. There is value to the licence fee payer in being informed of services provided by the licence fee. However we agree with the Government that research on the value of cross promoting BBC publicly funded services should be commissioned and we recommend that the findings of that research should be made public. The BBC should take the research findings into account. (para 230)
318. The BBC Fair Trading Commitment should be revised so that matters of internal BBC housekeeping are separated from those of external regulation. Matters of external regulation should be the responsibility of Ofcom. However, in the spirit of light touch regulation, and respecting the BBC's editorial and journalistic independence, Ofcom should seek to work in partnership with the BBC to rectify problems and fair trading infringements. Financial penalties should be imposed only as a last resort. (para 243)
319. The BBC's fair trading rules should be subject to approval by Ofcom as the lead sectoral competition regulator. (para 244)
320. In order for both the above recommendations to work we recommend that the BBC should be required to provide information relevant to fair trading and competition matters to Ofcom on request. This should form part of the Fair Trading Commitment. (para 245)
321. We recommend that the BBC Board should enforce strict separation between the management of commercial and public service activities within the BBC. (para 249)

Commissioning independent content

322. We support the proposal for the Window of Creative Competition (WOCC). We believe that in operating the WOCC the BBC should keep two objectives in mind: stimulating greater competition between the BBC and external producers in order to secure the best programming for licence fee payers, and achieving greater value for money for licence fee payers. The WOCC should open up competition to any supplier, whether the BBC, an independent production company or another broadcaster. (para 266)
323. The management of WOCC should be the responsibility of the BBC. The BBC Board should have a duty to monitor it carefully and to publish a bi-annual report on its operation. We recommend that the BBC should set indicative targets within the WOCC for sourcing from small and regional companies. (para 267)
324. The 10 per cent voluntary quota for independent radio production should be made mandatory. The BBC should consider the 10 per cent quota as a floor and not a ceiling and should operate a competitive commissioning process to secure the best programming available. (para 273)
325. We recommend a 25 per cent independent production quota for BBC's Online commissions (excluding news). In order to ensure that wider industry has confidence in the process we recommend that the BBC Board have a duty to secure fulfilment of the online independent production quota, to monitor commissioning of independent online content and to report bi-annually. (para 276)

326. One of the proposed public purposes for the BBC is to stimulate creativity and cultural excellence. We recommend that an explicit part of this remit should be to do what it can to support British film but without compromising the objective of providing licence fee payers with the best programmes. (para 279)

APPENDIX 1: MEMBERSHIP OF THE COMMITTEE

Select Committee on the BBC Charter Review

The members of the Select Committee which conducted the inquiry were:

The Lord Armstrong of Ilminster
 The Baroness Bonham-Carter of Yarnbury
 The Rt Hon the Lord Fowler [Chairman]
 The Baroness Gibson of Market Rasen
 The Rt Hon the Lord Holme of Cheltenham
 The Baroness Howe of Idlicote
 The Lord Kalms
 The Rt Hon the Lord King of Bridgwater
 The Rt Rev the Lord Bishop of Manchester
 The Lord Maxton
 The Baroness O'Neill of Bengarve
 The Lord Peston

Richard Collins, Professor of Media Studies at the Open University, and Member of the Centre for Research on Social and Cultural Change, was appointed as Specialist Adviser for the inquiry.

Declaration of Interest

ARMSTRONG OF ILMINSTER, Lord

15(a) Membership of public bodies
 Chairman, Board of Governors, Royal Northern College of Music
 Chancellor, University of Hull
15(b) Trusteeships of cultural bodies
 Chairman, Leeds Castle Foundation
 Chairman, Hestercombe Gardens Trust
 Trustee, RVW Trust
 Trustee, Derek Hill Foundation

BONHAM-CARTER, Baroness

**12(f) Regular remunerated employment*
 Television Producer, Brook Lapping Productions a subsidiary of Ten Alps
 Communications plc
**13(c) Financial interests of spouse or relative or friend*
 I also disclose the interests disclosed by Lord Razzall
16(b) Voluntary organisations
 RAPT - Rehabilitation of Addicted Prisoners Trust

FOWLER, Lord

**12(e) Remunerated directorships*
 Chairman, Aggregate Industries plc
 Chairman, Numark plc
 Chairman, Numark Trading Ltd (joint company of Numark plc and
 Phoenix Medical Services Ltd)
15(d) Office-holder in voluntary organisations
 Vice Chairman, all-party Group on AIDS
16(a) Trusteeships
 Trustee, Thomson Foundation

GIBSON OF MARKET RASEN, Baroness**12(i) Visits*

Visit to Bosnia - Herzegovina (30 May - 30 June) representing the I.P.U and paid for by the B.H I.P.U

15(c) Office-holder in pressure groups or trade unions

Member, AMICUS (former National Official of AMICUS)

President, RoSPA (Royal Society for the Prevention of Accidents)

15(d) Office-holder in voluntary organisations

President, Royal Society for the Prevention of Accidents

Hon. President, Yeadon Sqn. Air Cadets 2168

HOLME OF CHELTENHAM, Lord**12(d) Non-parliamentary consultant*

Special Adviser to Standard Chartered Bank

**12(e) Remunerated directorships*

Adviser, NTL

Chairman of the Board, Globescan International, Toronto, Canada

Member of the Advisory Board, Liberty Global Partners, Boston

Member of the Advisory Board, Montrose Associates

Member of the Advisory Board, Venture Exchange, Toronto, Canada

Non-executive Chairman, SPRING Worldwide

15(a) Membership of public bodies

Chairman of Governors, English College in Prague

Chancellor, University of Greenwich

15(d) Office-holder in voluntary organisations

Chairman, Advisory Board, British-American Project

Chairman, Hansard Society for Parliamentary Government

Chairman, Royal African Society

Chairman LEAD International

Council Member, Overseas Development Institute

16(a) Trusteeships

Saïd Business School Oxford

**12(d) Non-parliamentary consultant*

Special Adviser to Chairman, Rio Tinto plc

**12(e) Remunerated directorships*

Adviser, NTL

Chairman of the Advisory Board, ISG (Industrial Services Group - an environmental clean-up company in California)

Chairman of the Board, Globescan International, Toronto, Canada

Director, Africa International Financial Holdings Llc, Boston, USA

Member of the Advisory Board, Liberty Global Partners, Boston

Member of the Advisory Board, Montrose Associates

Member of the Advisory Board, Venture Exchange, Toronto, Canada

15(a) Membership of public bodies

Chairman of Governors, English College in Prague

Chancellor, University of Greenwich

15(d) Office-holder in voluntary organisations

Chairman, Advisory Board, British-American Project

Chairman, Centre for the Advancement of Sustainable Development Partnerships

Chairman, Hansard Society for Parliamentary Government

Chairman, Royal African Society

Chairman LEAD International
Council Member, Overseas Development Institute

HOWE OF IDLICOTE, Baroness

15(a) Membership of public bodies
Member of Governing Body, London School of Economics
15(b) Trusteeships of cultural bodies
Trustee, Architectural Association - School of Architecture
16(a) Trusteeships
Trustee, The Ann Driver Trust

KALMS, Lord

**12(e) Remunerated directorships*
Chairman, Volvere plc
**12(f) Regular remunerated employment*
President, Dixons Group plc
15(a) Membership of public bodies
Member (Shareholder) Dixon's C.T.C Bradford (Resigned Governor
18.6.03)
15(c) Office-holder in pressure groups or trade unions
Trustee, New Frontiers Foundation
16(a) Trusteeships
Trustee, Jewish Association for Business Ethics
Trustee, The Stanley Kalms Foundation (15 September 2004)
Trustee, RK and SK Trust (15 September 2004)
Trustee, Kalms Grandchildren settlement (15 September 2004)

KING OF BRIDGWATER, Lord

**12(e) Remunerated directorships*
Director, Electra Investment Trust
Non-executive Chairman, London International Exhibition Centre plc and
London International Exhibition Centre (Holdings) Ltd
**13(b) Landholdings*
Minority Partner in family farm in Wiltshire (including cottages)
Partner in woodlands in Wiltshire
15(d) Office-holder in voluntary organisations
Patron, UK Defence Forum

MANCHESTER, Lord Bishop of

**12(f) Regular remunerated employment*
In receipt of episcopal stipend
15(a) Membership of public bodies
Chair, Sandford St Martin (Religious Broadcasting Awards) Trust
General Synod of the Church of England
Manchester Diocesan Board of Finance
Manchester Church House Co.
Manchester Diocesan Council of Education
Manchester Diocesan Association of Church Schools
Life Governor, Liverpool College
Governor, Hulme Hall
15(d) Office-holder in voluntary organisations

Lord High Almoner to H.M. The Queen
National Chaplain, Royal British Legion
 16(b) *Voluntary organisations*
Board of Royal School of Church Music
Manchester Diocese, Mothers' Union
Arches Housing
Disabled Living
Hulme Hall Trust
Wigan & Leigh Hospice
St Ann's Hospice
Manchester University of Change Ringers

MAXTON, Lord

*13(b) *Landholdings*
Holiday home in the Isle of Arran
A London flat

O'NEILL OF BENGARVE, Baroness

*12(f) *Regular remunerated employment*
Principal, Newnham College, Cambridge
 15(a) *Membership of public bodies*
Chairman, Governing Body, Newnham College, Cambridge
Deputy Vice Chancellor, University of Cambridge
 15(d) *Office-holder in voluntary organisations*
Trustee and Chairman, Nuffield Foundation
Trustee, Sense About Science
Trustee, Gates Cambridge Trust
Member, Council of Management of the Ditchley Foundation
President, British Academy

PESTON, Lord

*12(e) *Remunerated directorships*
Philip Allan Updates
 15(d) *Office-holder in voluntary organisations*
President, Institute of Administrative Management
Vice President, Speakability

APPENDIX 2: LIST OF WITNESSES

The following bodies made their views known to us in evidence. Those marked * gave oral evidence.

- The Advertising Association
- * ARD (German public service broadcaster)
- * Professor Mark Armstrong
- * Association of Broadcasting Regulatory Authorities (German regulator)
- * BBC
- * BBC World
- * BBC World Service
- * Sir Christopher Bland
- * Dr Georgina Born
- * Mr Adam Boulton
- * Sir John Bourn KCB
- British Internet Publishers Alliance
- Broadcasting Entertainment Cinematograph and Theatre Union
- * BSkyB
- * The Lord Burns
- Campaign for Press and Broadcasting Freedom
- Canadian Broadcasting Corporation
- * Professor Martin Cave
- * Channel 4
- * Channel five
- * Commercial Radio Companies Association
- Creators' Rights Alliance
- * Mr Gavyn Davies
- * Department for Culture, Media and Sport
- * Digital TV Group
- * Mr Greg Dyke
- Equity
- Flextech Television
- * Mr Don Foster MP
- * Dr Dieter Helm
- * Sir Derek Higgs
- * Mr John Humphreys
- The Incorporated Society of British Advertisers

- * ITN
- * ITV
- * KEF (German body responsible for evaluating the licence fee)
Mr J Marmont
- * Mr Kevin Marsh
- * The Rt Hon Theresa May MP
Music Business Forum
The Newspaper Society
ntl:
- * Ofcom
- * Sir Robert Phillis
- * Producers' Alliance for Cinema and Television
House of Commons Committee of Public Accounts
- * Public Voice
The Lord Puttnam
Radio Independents Group
- * Mr Nick Robinson
Royal National Institute of the Blind
- * S4C
- * The Satellite & Cable Broadcasters Group
- * Dr Damian Tambini
UK Film Council
Video Networks Limited
- * Voice of the Listener & Viewer
- * ZDF (German public service broadcaster)

The following written evidence has not been printed, but is available for inspection at the House of Lords Record Office (020 7219 5314)

Ms Elizabeth Bray

Mr Robert Andrew Brown

Mrs Mary Colby

Mr J M Wober

Some evidence that will have particular relevance to the next part of our inquiry will be published with our next Report.

APPENDIX 3: GLOSSARY

ADSL (Asynchronous Digital Subscriber Line)

The technique of utilising the standard telephone line for broadband internet services (including streamed video or audio broadcast like services).

Analogue spectrum

The collection of radio frequencies used by analogue radio and television broadcasts. Competition for such frequencies is fierce. Other users of spectrum include police and fire service radios, air traffic control, satellite transmissions, microwave ovens, mobile phones and baby monitors.

Digital radio

Refers to transmitting a radio broadcast signal by encoding it as 0s and 1s - the digital binary code used in computers. This reduces the potential for the broadcast to be corrupted during transmission by weather conditions and other problems. Allows broadcasters to transmit far more channels within the same amount of radio spectrum compared to analogue radio.

Digital switchover

The process of switching all terrestrial television in the UK to digital signals. The Government has announced how this will be carried out region by region between 2008 and 2012.

Digital television

Refers to transmitting a television broadcast signal by encoding it as 0s and 1s. Can provide four, five or more channels in the same bandwidth required for one channel of analogue television. Provides new opportunities for interactive television services.

Digital signals can be received by standard aerials or satellite dishes if wireless transmissions or via wires whether dedicated cable for broadcasting or using technologies such as ADSL via the standard telephone line. There are therefore several sub-types of digital television: notably digital terrestrial (received through a standard aerial), digital satellite, digital cable and internet television.

Digital UK

The industry funded body responsible for co-ordinating and promoting the transition to digital –only television. Previously known as SwitchCo, it is an independent, not-for-profit organisation which will work with the Government, Ofcom, consumer groups and industry.

Electronic programme guide (EPG)

An on-screen guide to scheduled broadcast television programs, allowing a viewer to navigate, select and discover content by time, title, channel, genre, etc, using their remote control.

Freeview

Freeview is a form of digital terrestrial television. It allows viewers to receive up to 30 free digital TV channels, plus radio and interactive services. A set top box converts the signal to digital if the television receiver has an analogue tuner. No contract or subscription is required for access to Freeview services – viewers make a one-off payment for equipment. It is marketed by DTV Services Ltd. a company run by its three shareholders the BBC, Crown Castle International and BSkyB..

Market Impact Assessment

An assessment of the impact that a service may have on the market. The market impact assessment proposed prior to approval of new (or modified) BBC services would provide an assessment of whether the service in question might have an adverse impact, e.g. by driving other providers out of the market or significantly lessening competition. The Government state hat a market impact assessment will be a crucial part of the BBC public value test.

Personal Video Recorder (PVR)

Records TV programmes onto a built-in hard drive instead of video tape or DVD. It has an integrated electronic programme guide (EPG) and enables the viewer to pause and “rewind” live TV and record whole series. It has much more recording time than a standard VHS cassette or recordable DVD.

Pod-casting

A method of publishing audio programs via the internet. Podcasting enables independent producers to create self-published, syndicated “radio shows,” and gives broadcast radio programs a new distribution method. Listeners may download the podcast file onto a computer or MP3 player such as an iPod. It can be heard at any time and, if downloaded onto a portable device such as an iPod, heard in any location.

Privy Council

The Privy Council is a formal constitutional body. Historically it was the forum where Ministers provided the Sovereign with advice. Appointment to the Privy Council is for life, but only Ministers of the democratically elected Government of the day participate in its policy work. Nowadays Councils are held by The Queen and are attended by Ministers and the Clerk of the Council on average once a month Its day to day business is transacted by those of Her Majesty’s Ministers who are Privy Counsellors, that is all Cabinet Ministers and a number of junior Ministers. Another major function of the Privy Council, exercised through its Judicial Committee, is the provision of a final Court of Appeal for a number of Commonwealth countries who have chosen to retain it.

PSB

Public Service Broadcasting

Public Value Test (PVT)

The test that the BBC proposes to apply to all proposals for new services. Its exact form is still being debated. The aim of the PVT is to assess whether a service delivers value to individuals and citizens beyond its economic worth. The PVT will

be based on an assessment of the citizen, individual and economic value of a service. The PVT will embrace matters such as quality, reach, market impact, value for money and the contribution a service makes to the BBC's public purposes.

Red button services

The services that digital viewers can access by pressing the red button on their digital remote. Provides access to interactive content and information.

Service licences

A licence for each BBC service which specifies a detailed remit against which performance can be measured. The Government propose that service licences will be issued by the BBC Trust in negotiation with BBC management. The nature and content of the BBC service licences are not yet clear. Formerly DCMS issued service licences for new BBC services and many of these have been criticised for their lack of specificity. Ofcom issues licences to other UK broadcasters but these differ from those proposed for the BBC in that they require adherence (graduated in stringency according to the nature of the broadcasts provided by licensees) to Ofcom codes (which refer to the content regulatory tiers) rather than prescribing a detailed remit as the BBC licences are likely to do.

Switch-co

See Digital UK above.

Terrestrial broadcasters

The conventional term used to refer to the BBC, ITV, Channel 4, S4C and Channel five.