

3 The BBC's constitution

What people think

- There is support for a new Royal Charter but there are calls for it to be written in a language that people can understand.

Our policy

The public want the BBC to remain the cornerstone of public service broadcasting. They also want it to be kept separate from Government and Parliament. We think the best way to achieve both these aims will be through a new ten-year Royal Charter.

A new Charter would give the BBC: independence from Government; the necessary certainty to plan for the longer term; and the necessary flexibility to adapt to rapid change.

In ten years' time, but not before, there will need to be a further thorough review of the BBC's role and purpose. A Royal Charter will allow such a review to take place. In addition, given the pace of technological change and the potential threat that it poses to commercially funded public service broadcasting, there should be some scope for review in the interim – not of the constitution of the BBC itself, but of the funding arrangements for the BBC and other broadcasters.

A ten-year constitutional settlement for the BBC

- 3.1 If the BBC is to remain the cornerstone of public service broadcasting, it needs a constitution that will give it three things:

Independence. The BBC needs to be protected from any editorial interference from Government, Parliament, or any commercial influence. Its constitution should provide that protection.

Certainty. The BBC needs to be given sufficient stability and security to plan for the mid to long-term. It must not be held back by a constant threat of review and reform from Government. Its commercial rivals also need some degree of certainty about the likely scope of the BBC's activities in the medium term so that they can plan accordingly.

Flexibility. Given the pace of change, the BBC must be given scope to react to new technologies and audience demands. It may be appropriate for the BBC to take a leading role in the development of some new technologies, just as it has in digital television and radio. That may mean allowing services and activities to evolve from their 2004 position into new areas – but only where such evolution is clearly shown to be in the public interest and will not have an excessively adverse market impact.

A cornerstone – the public’s view

“The BBC has acquired a reputation for excellence in public service broadcasting throughout the world. In the United Kingdom it has been described as the ‘cornerstone’ of public service broadcasting; the standard by which other broadcasters are assessed.”

“The radio, especially BBC Radio 4, is the backdrop to my life, my constant companion and my connection to the world beyond my immediate community.”¹⁸

3.2 We think the best way to satisfy these criteria will be to institute a new Royal Charter lasting from 2007 to 2016. The current Charter and Agreement will need to be rewritten, and we will try to set them out in clearer language so that every licence fee payer can understand their significance.

Box 3.1 The BBC’s current constitutional status

The BBC’s Royal Charter is granted by the Queen under the Royal Prerogative. It is the basis for the Corporation’s existence, sets out its constitution and objectives and addresses some organisational and financial issues. New BBC commercial and non-broadcasting public services are approved by the Secretary of State under the Charter.

The accompanying Agreement is effectively a contract between the Secretary of State and the BBC, setting out the respective obligations of each party. The Agreement supplements the Charter in various ways. For instance, it:

- establishes the BBC’s independence;
- defines its right to the licence fee;
- addresses the number of Home Services (and gives the Secretary of State a role in approving changes);
- sets out in more detail the remit of those services; and
- imposes various regulatory requirements (giving Ofcom a regulatory role in relation to some of them).

The existing Agreement stipulates that any changes to it are subject to approval by the House of Commons. In practice, both Charter and Agreement are put before both Houses for debate as part of the Charter renewal process.

Alternatives to a Charter

3.3 The Culture, Media and Sport Select Committee, in its recent report on the future of the BBC, has suggested that the BBC should be established as a statutory body by an Act of Parliament¹⁹. The Committee argues that this would give the BBC greater independence from Government and greater security from the threat of abolition at the end of its Charter period. Having given this argument careful consideration, we disagree.

¹⁸ Responses to DCMS consultation, published on our website at www.bbccharterreview.org.uk

¹⁹ House of Commons Culture, Media and Sport Committee, *A public BBC*, pp. 55–60

3.4 Box 3.2 sets out some of the pros and cons of statutory status as opposed to Chartered status. We are concerned that if the BBC was a statutory body it might be more open to detailed Government intervention. If an interim five-year Charter was granted, as the Select Committee suggests, the whole process of Charter Review, with additional Parliamentary stages, would need to begin again in only two or three years time. We feel a ten-year Charter is necessary to provide the certainty and independence that the BBC needs. It would also have a clear end-date – given the pace of change in broadcasting technology, a ten-year Charter would provide a necessary opportunity for a further thorough review of the BBC's role and purpose in ten years time. Qualitative research suggests that the public agree that a Royal Charter is preferable to an Act of Parliament – mainly because they feel a Charter would better protect the BBC's independence²⁰.

Interim reviews

3.5 In the course of the next decade, increasing digital take-up will bring a radical change to the broadcasting landscape and the structure of the PSB system. It may alter the way many people watch and pay for television. Towards the end of the process of digital switchover, therefore, there should be scope for interim reviews of two specific aspects of the funding system for the BBC and PSB:

- the future method of funding the BBC beyond 2016 (discussed in Chapter 4); and
- the level of the licence fee, and the possible wider distribution of public funding (including licence fee income), to broadcasters other than the BBC (discussed in Chapter 10).

²⁰ Cragg Ross Dawson, *Qualitative research on key issues*, 2005

Box 3.2 Pros and cons for the BBC of Chartered vs statutory status

	Arguments for	Arguments against
Chartered status	<p>Helps to preserve the BBC's independence – a Charter cannot normally be revoked during its lifetime. By placing the BBC within a tradition of independent bodies, Chartered status may help to preserve it from inappropriate legislative interference.</p> <p>Certainty of time limit on a Charter allows the BBC and, to some extent, its commercial rivals to plan accordingly, while allowing fundamental review at expiry.</p> <p>Charter and Agreement provides the flexibility for the Government and BBC to agree detailed changes as issues arise – without full Parliamentary process.</p>	<p>Less of a direct relationship between Parliament and the BBC, (although Select Committee scrutiny of Annual Report is possible.)</p> <p>The expiry of a Charter periodically exposes the BBC in its entirety to intervention from the Government of the day.</p>
Statutory status	<p>Would give the BBC the same legal status as most other public bodies.</p> <p>Would allow more direct accountability to Parliament. Any periodic review would be subject to full Parliamentary procedure.</p>	<p>No guarantee of long-term existence or independence – legislation would be subject to repeal and/or repeated amendment. Lack of stability may compromise the BBC's independence.</p> <p>The Parliamentary process involved would create uncertainty, particularly since a shortened interim Charter would be required for the duration.</p> <p>The next Charter might be written in plainer English, but legislation is unlikely to be as comprehensible to the general reader.</p>