

## BBC PUBLIC SERVICES: APPROVALS

### 1. Royal Charter and Agreement

References throughout this document to the "Charter" and the "Agreement" are references to "the Royal Charter for the Continuance of the British Broadcasting Corporation - May 1996 (Cm 3248)" and "the Agreement Dated the 25th Day of January 1996 Between Her Majesty's Secretary of State for National Heritage and the British Broadcasting Corporation - Cm 3152)".

#### 1.1 The BBC are required as part of their objects under Article 3(a) of the Charter:-

"To provide, as public services, sound and television broadcasting services (whether by analogue or digital means) and to provide sound and television programmes of information, education and entertainment for general reception in Our United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man and the territorial waters thereof, and on board ships and aircraft (such services being hereinafter referred to as "the Home Services")..".

#### 1.2 The Charter also provides, in Article 3(b), that:

"Subject to the prior approval of Our Secretary of State or within such limits as may be agreed from time to time between the Corporation and Our Secretary of State, to provide, as public services, other services whether or not broadcasting or programme supply services (such services hereinafter referred to as "the Ancillary Services")." This covers, for instance, the BBC's licence fee-funded online services.

#### 1.3 The Secretary of State's approval is required under the Charter and Agreement to new licence fee-funded public services:

1.3.1 Clause 2.2 (d) of the Agreement states that the Corporation undertakes to provide "a number of local sound programme services for general reception in certain parts of the United Kingdom, subject to such minimum and maximum numbers as may from time to time be agreed with the Secretary of State"

1.3.2 Clause 2.3 of the Agreement states that "The Corporation may, subject to the prior agreement of the Secretary of State, vary the number or geographical coverage of its national television and sound programme services."

1.3.3 Article 3(b) of the Charter states that "Subject to the prior approval of Our Secretary of State or within such limits as may be agreed from time to time between the Corporation and Our Secretary of State, to provide, as public services, other services whether or not broadcasting or programme supply services (such services being hereinafter referred to as "the ancillary services")."

#### 1.4 There are also provisions in Clause 10.1 of the Agreement which provide that:

1.4.1 the Secretary of State may from time to time direct that licence fee revenue "may also be used for such purposes (not being purposes of the Home Services or the World Service) as he may specify"; and

1.4.2 "such sums shall not, without the prior written approval of the Secretary of State, be used for the purposes of any television or sound programme services wholly or partly funded by advertisements, subscription, sponsorship, pay-per-view or any other alternative means of finance."

#### 1.5 Clause 2.2 of the Agreement lists the television and radio services which formed part of the Home Services at the time of the last renewal of the Charter in 1996 (BBC1 and BBC2,

Radios 1-5 and the national, regional and local radio stations). Those services (and the new public services approved since then) must abide by the requirements for programme content and standards set out in Clauses 3.2 and 5.1 respectively of the Agreement. These requirements can only be altered by amending the Agreement with the consent of Parliament. The Secretary of State's approval is also required if the BBC wishes to vary the number or geographical coverage of its national television and radio services or to change the minimum and maximum number of its local radio services under Clauses 2.2(d) or 2.3 of the Agreement.

- 1.6 New services, which have been the subject of approval by the Secretary of State, must, in addition to abiding by the requirements of clauses 3.2 and 5.1 of the Agreement, also abide by the terms of their approval. Once approval has been given to a new public service, the BBC should be able to develop the service without further recourse to Government, though approval is subject to periodic review and independent assessment (see paragraph 2.3 below). But the Secretary of State's approval must again be sought if the BBC proposes to make a material change to a service approved since the start of the current Charter, which would otherwise take the service outside the terms of that approval.
- 1.7 Also, "an appropriate process of public consultation" must be undertaken by the BBC "prior to making any material change to the nature of the Home Services" within the meaning of Clause 4.3 of the Agreement.

## **2. Consultation procedures**

- 2.1. When a request for approval within these guidelines is received from the BBC, the Secretary of State will publish details of the request and invite written representations from the broadcasting and communications industry, the Independent Television Commission, the Radio Authority and consumer groups. Consultees will normally be given 20 working days to comment. This consultation is in addition to the existing requirement on the BBC to consult prior to making any material change to the nature of the Home Services (see paragraph 1.7). Representations will be taken into account before a decision is reached by the Secretary of State on whether or not to grant the BBC approval.
- 2.2 The Secretary of State will publish details of his decision.
- 2.3 Approval will include a condition allowing for a periodic review of the service by the Secretary of State. Such a review will involve seeking detailed confirmation from the BBC that the Corporation is acting in accordance with the facts and assurances upon which the approval was given. The review will include an independent assessment.

## **3. The Secretary of State's Concerns**

- 3.1 The Secretary of State's main concerns in considering BBC requests for approval of a new licence fee funded service (or changes to existing services that require his approval (see paragraph 1.6 above)) are to ensure:
  - 3.1.1 that the proposed new service (or changes to existing services that require his approval (see paragraph 1.6 above)) is compatible with the BBC's primary public service role as set out in the Charter and Agreement and that it furthers any or all of the public purposes for the Home Services set out in those documents. The Secretary of State will consider whether:
    - . the proposed service will enhance the BBC's achievement of its undertakings on programme content and standards in the Agreement;
    - . whether the proposed service has received the necessary internal approvals, including from the BBC's Board of Governors.

3.1.2 that the value to the public of the service is proportionate to the likely impact on the market. The Secretary of State will consider:

- . whether the BBC has fulfilled its obligation to consult licence fee payers on proposals to make any material change to the nature of the Home Services);
- . whether the BBC has published detailed results from its consultation;
- . the nature and coverage of commercial services of a similar nature;
- . the likely impact of the proposed service on commercial services already in the market and on potential future services;
- . the distinctiveness (in programming or content) of the proposed BBC service from those provided by other broadcasters.

3.1.3 that the service will be universally accessible within a reasonable period of time to those with appropriate receivers and free at the point of use (though recognising that the BBC is reliant on others for distribution mechanisms and the extent of coverage those access mechanisms afford).

3.1.4 BBC financial prudence (ie that the Board of Governors is satisfied that the new service represents value for money for licence fee payers).

#### **4. Information required from BBC**

4.1 The BBC is required to complete a pro-forma for each request for approval giving the following information:

4.1.1 a description of the proposed new service (or changes to existing services that require his approval (see paragraph 1.6 above)) and how it fits in with the BBC's public service obligations. This must include details of how the proposal will enhance the Corporation's achievement of its undertakings on programme content and standards in the Agreement;

4.1.2 details of under which provision of the Charter or Agreement an approval or direction is required and of why the BBC considers such approval to be necessary.

4.1.3 details of why the BBC is proposing to fund the service through the licence fee as opposed to operating it as a commercial service.

4.1.4 an assurance from the BBC Governors that the proposed service represents value for money to licence fee payers;

4.1.5 confirmation that the necessary internal approvals have been given including - approval from BBC legal, finance and policy advisers, approval from the Executive Committee and approval from the Board of Governors and details of when those approvals were given;

4.1.6 details of the consultation carried out by the BBC pursuant to Clause 4.3 of the Agreement where appropriate.

4.1.7 the date by which Secretary of State's approval is sought (this should allow a minimum of two calendar months);

4.1.8 the timetable and expected launch date of the new service (or changes to existing services that require his approval (see paragraph 1.6 above))

4.1.9 details of the proposed new service (or changes to existing services that require his approval (see paragraph 1.6 above)) including;

- scope
- geographical coverage - in particular that it will be accessible by all viewers or listeners within a reasonable period of time
- confirmation that the service will be universally available for those with appropriate receivers without extra payment ie available free-to-air
- a statement that the activities are in accordance with the BBC's fair trading commitment.

4.1.10 details of contact individual(s) at the BBC.

## **5. The Secretary of State's Consideration**

5.1 The Secretary of State considers each BBC request for approval individually. Approval of one proposal does not remove the need for approval of others of a similar nature.

5.2 Advice is sought from DCMS Legal Advisers on each request for approval. Advice from the DCMS Head of Accountancy, the DCMS Economist, and others within and outside the Department, including Treasury and the Office of Fair Trading, is sought as necessary.

5.3 The Secretary of State makes every effort to meet BBC timescales, provided that these are reasonable. A minimum of two calendar months should normally be allowed for the Secretary of State to give his approval. Informal guidance may be sought at an earlier stage as part of the continuing approvals process, but new services must not be launched until approval has been given.

5.4 The Secretary of State will consider formal proposals for approval without Executive Committee approval, but will not issue an approval until the Board of Governors approval is secured.

5.5 All proposals for new licence fee funded services (or changes to existing services that require his approval (see paragraph 1.6 above)) require the Secretary of State's approval.

