



October 2016

Digital Economy Bill (Commons committee stage)

Main points:

- Clause 75 Regulation and functions of the BBC: The bill amends section 198 of the Communications Act 2003 Act so that Ofcom can regulate all of the BBC's activities, in particular, the BBC's commercial services, online activities and the World Service. This is an enabling measure and the detail of what functions Ofcom will be required to carry out will be set out in the Charter and Framework Agreement.
- Clause 76: The bill transfers to the BBC the function of making provision for a concession by reference to age (for persons who are aged 75 or over) to the BBC. The Secretary of State will retain the power to make provision for all other concessions as set out in the 2003 Act.

Licence-fee concession for the over-75s

The public response to the consultation on the future of the BBC was one of the largest ever, but the game was lost before it had even begun by the BBC agreeing to a deal with George Osborne.

Much-loved BBC content and services will suffer or be cut because the BBC said it would take on the enormous, damaging cost of free licence fees for the over 75s. This is currently a welfare benefit, introduced by Gordon Brown in 2001.

It will cost the BBC £1.3bn over five years, then £750m each year. That represents a 20 per cent cut in annual income from the licence fee.

To put it into perspective, £750m is:

- * almost seven times the cost of all 39 BBC Local Radio stations in England (£115.1m)
- * over eight times the budget for BBC Radio 4 (£90.2m)
- * 15 times the cost of BBC4 (£48.7)
- * and nearly 8 times the budget for CBBC and CBeebies combined (£97m)

(These are annual figures taken from the service licence agreements issued by the BBC Trust for 2016/17)

From 2020, the BBC will have the power to change the eligibility criteria, the level of concession, the qualifying age (although this cannot be lower than 65) - or to even end the perk altogether.

The BBC agreed to this deal after being strong-armed by George Osborne. The concessions in return – a license fee linked to CMI and an end to paying for broadband – in no way makes up for the huge financial penalty of taking on the cost of the over-75s licences. BBC management are now put in the invidious position of being responsible for removing or cutting a welfare benefit for the elderly.

It is absolutely extraordinary that a fee for BBC programming and services should be used to supplant a DWP benefit.

Professor Diane Coyle OBE, former vice-chair of the BBC Trust, described this transfer to the BBC as "profoundly unconstitutional" and "a further and massive attack on the broadcaster's independence".

The BBC is the cornerstone of the UK's creative industry. Every £1 of the licence fee spent by the network generates £2 of economic activity, adding £8.3bn to the economy. The BBC and World Service are the best way to export British culture and values around the globe. Why would anyone support a diminution – of 20 per cent – of one of the country's most successful and respected institutions?

There is limited scope for more efficiency savings. Since the last charter the BBC made cuts of £1.5bn and staff say they are already suffering from high workloads. James Harding, head of BBC news, is planning a £80 million annual cut from the News budget by 2021-22.

The deal needs to be rejected or revised; otherwise the corporation will not be able to produce news and drama to the same quality. Journalists will lose their jobs so the BBC can afford to pay for this benefit.

Would it be more in the interests of licence fee payers for this cut to be reduced to (say) 10 per cent or removed altogether by stopping the transfer?

Ofcom

The NUJ has concerns about Ofcom as a regulator. The government must ensure Ofcom has funding for adequate staff with the relevant expertise to fulfil its new responsibilities re the

BBC.

The union is concerned that to date Ofcom has a poor record in safeguarding public service broadcasting. It was set up as a light-touch regulator and this has had consequences. The NUJ has already taken issue with Ofcom's decision to allow ITV local news to be reduced by a third in the latest 10-year broadcast licences for ITV, STV, UTV and Channel 5. Dorothy Byrne, head of news and current affairs at Channel 4, has also worked at ITV. At an NUJ event on the future of PSB, she explained how Ofcom did nothing as ITV slashed its current affairs coverage, such as World in Action. ITV management was more concerned about ratings than its commitment to investigative journalism.

The present BBC Trust puts a huge weight on the "public value" of what the BBC does, however Ofcom as it stands has been more concerned with the impact on competition and the operation of the broadcasting market. As Robert Peston, ITV's political editor and former business editor of the BBC, said: "So there is a high probability that the BBC's activities will be much more severely circumscribed by an Ofcom highly sensitive to the impact of the BBC on the likes of the ITV and Sky. In practice, the BBC's ability to make highly popular programmes, or invest in important new technologies, may be reined in."

The BBC White Paper criticised the BBC because it has a monopoly on children's TV, but the reason it is the only commissioner of children's programmes is because other broadcasters reneged on producing them. It was Ofcom's light touch which allowed this.

If Ofcom is to expand its remit, there should be stricter obligations on PSB channels to reach certain levels of investment in first-run programming, prime-time current affairs and diversity. Ofcom must have a duty to collect and publish employment data that includes gender, age, ethnicity, socio-economic status, sexuality and disability in terms of access to jobs, pay rates, internships and employment status. It should set diversity targets and be given powers to award penalties to organisations which fail to meet them.

- The white paper **A BBC for the future: a broadcaster of distinction** states that Ofcom will be obliged ensure that assessment of the public value of BBC proposals "does not bias non-commercial interests over commercial ones". Will it also be obliged to ensure that, equally, the process does not bias commercial interests over non-commercial ones?
- The white paper states that Ofcom will have the power to "sanction the BBC, including where appropriate through proportionate fines". There is clearly a risk that fines could damage services. How will this regime operate in a way that protects licence fee payers?
- The white paper states that it will be Ofcom's responsibility to run a new operating licence framework for the BBC. How will this work? Are there sufficient safeguards to prevent the unilateral watering down of services by the BBC Executive?

- Are there detailed provisions to ensure that all possible major market interventions by the BBC are subject to Ofcom approval? At the very least, these should:
 - Require Ofcom to undertake (i) a public value test (ii) a market impact test for any such intervention.
 - Give Ofcom the right to demand changes to the proposal or to refuse it altogether, based on the outcome of the two tests.
 - Define major market interventions, which might include proposals to: open or close any BBC service with an annual content budget of at least £Xm*; increase or reduce content spending on particular BBC services or genres by at least £Xm; newly open up to competitive tendering or offer as a quota to eligible non-BBC entities content production to a value of at least £Xm; create a wholly-owned BBC subsidiary with production capacity; employ methods of funding employed by non-public broadcasters in the UK (e.g. advertising, subscription); use income from the BBC licence fee for any purpose other than funding the BBC.

* In view of the low cost of some BBC services, especially in radio, this figure should be no higher than £3m.

Press freedom

Chapter 1 of Part V Clause 33 proposes criminalising passing on information that has been unauthorised for sharing. This will have a damaging impact on journalists and journalism by creating new restrictions that will impact on journalistic work. The draft bill includes the imposition of criminal penalties for any individual, including journalists, who share information. The NUJ is strongly opposed to these proposals as they represent a clampdown on press freedom. There are already sufficient provisions in the law covering confidentiality, employment, misconduct in a public office, data protection and official secrets. The clause needs to be amended to recognise the role of journalists and the public interest.

The union is also concerned by **clause 32(4)** that proposes to extend the concept of personal information (and the associated privacy entitlements) to corporations.

Levy of global media groups/news aggregators

The bill has missed a golden opportunity to include a levy of global media groups/aggregators. In the UK alone, Google generated over £7 billion of revenues in 2015 with a search market share of over 90 per cent. Facebook registered £105 million of UK revenues in 2014 and commands more than 80 per cent of the social networking market. Much of these revenues are accrued from advertisers that once supported news publishers. A levy would ensure that such corporations not only make a more meaningful contribution to the public purse (proportionate to the scale of their revenue), but also funds raised could be targeted at those forms of public interest journalism most under threat. If a levy was imposed on those companies with more than a 25 percent share of these UK markets, it would currently have an impact upon Google and Facebook. Based on their last reported

annual UK revenues, a one percent levy would generate in excess of £70 million. Such funds could be redirected via an independent Media Plurality Board appointed by an independent panel along similar lines to the appointments system in place for the Press Recognition Panel, and it could be housed under the auspices of Ofcom. [See The Mission of Media in an Age of Monopoly <http://www.respublica.org.uk/wp-content/uploads/2016/05/The-Mission-of-Media.pdf>]