

# House of Lords Select Committee on Communications and Digital

## Public service broadcasting: as vital as ever

### Government Response

#### Introduction

The Government welcomes the publication of the report by the House of Lords Select Committee on Communications and Digital: “Public service broadcasting: as vital as ever”.

The Government shares the Committee’s view about the importance of public service broadcasting (PSB) and its continued relevance in the age of video on demand.

As set out in its written submission to the Committee, the Government is clear that PSB provides significant cultural, economic and democratic value to the UK. It is free at the point of use, universally available and works for the public benefit to foster shared experiences, stimulate learning, and to reflect communities from across the country. Evidence from Ofcom also shows that PSB programming remains popular and valued by UK audiences.

However, in a changing media landscape, public service broadcasters will need to adapt if they are to sustain the public value which they provide; and legislation and regulation will need to evolve to ensure a regulatory framework which is fit for purpose. The Communication Committee’s report raises a number of areas where this may be the case.

The Committee’s report, and Ofcom’s ongoing PSB Review, are timely in their consideration of these issues, and the Government will continue to work closely with Ofcom and the sector to consider these issues over the coming months. The Government wants to ensure the continued health of a modern PSB system: one that is capable of bringing the nation together through shared experiences; that represents and serves audiences in all parts of the UK; and that remains at the heart of our world-class broadcasting sector, which also includes a thriving and diverse ecology of non-PSB broadcasters and services.

The Government’s response to the Committee’s specific recommendations are set out below.

#### Public service broadcasting

- 1. Public service broadcasting remains essential to the UK media and losing it would leave UK society and democracy worse off. Public service broadcasting can bring the nation together in a way in which other media cannot and can ‘raise the level’ of quality, as well as ensuring continued investment in original UK content across a range of programming. An essential feature of public service broadcasting is its universality, free at the point of use after paying the licence fee: both the availability and affordability of public service*

*broadcasters are unmatched by other services. In its forthcoming PSB review, Ofcom should also consider the contribution of content from non-public service broadcasters to public service objectives. (Paragraph 31)*

**Response:**

The Government agrees that public service broadcasting (PSB) plays a vital role in the wider UK media ecology and provides significant cultural, economic and democratic value to the UK. The good that public service broadcasting can do and the impact it makes on our society, our economy and our standing around the world should not be lost.

Alongside public service broadcasters and as part of this mixed ecology, commercial broadcasters are also central to our television sector. The Government welcomes the valuable contribution that commercial broadcasters also make to the cultural, economic and democratic benefits provided by the sector as a whole. For example, the Government notes that COBA reports that in 2018 commercial broadcasters invested more than £1.1 billion pounds a year in UK content.

The Government also welcomes that Ofcom's ongoing PSB Review will “..bring together evidence not only about the main PSB services, but also the range of media services – television, radio, online and elsewhere – available to consumers in the UK”.

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2. *Younger audiences are increasingly turning towards SVODs [subscription Video On Demand] while spending less time watching public service broadcasting. **Public service broadcasters face a difficult choice in dividing limited resources between appealing to older and younger viewers with different viewing habits and tastes. However, they must produce content which serves and reflects all audiences in the UK and the legitimacy of the licence fee depends on this.** (Paragraph 76)*

**Response:**

The Government expects public service broadcasters to deliver high-quality, distinctive content for all audiences and licence fee payers across the UK. This is important in order to deliver what consumers want to watch, but also in terms of delivering content that supports the wider objectives of PSB, including to inform audiences, to stimulate learning, to reflect the UK's cultural identity, and to make audiences aware of different viewpoints. In many cases this content would be underprovided or not provided at all by an unregulated market.

The Government looks forward to the publication of Ofcom's assessment of PSB performance later this year, which is part of Ofcom's ongoing PSB Review and which will set out how effectively PSBs are meeting the needs of UK audiences.

The Government recognises in particular the need for public service broadcasters to appeal to younger viewers to ensure they remain relevant, in light of audience trends. The public service broadcasters need to continue to innovate in the creation

and distribution of high-quality content, helping them find young audiences where they now are, and being swift to adapt as audience expectations continue to change.

In this context the Government is directly supporting the development of content for young audiences through the Young Audiences Content Fund, which launched in April 2019. This is providing up to £57 million to help stimulate the provision and plurality of UK-originated public service content for young audiences on free to air television.

The Government also gave Ofcom new powers under the Digital Economy Act (2017) to publish criteria on commercial PSBs' provision of children's programming and, if appropriate, to set related conditions. Ofcom launched a children's content review in 2017, and as part of this identified areas of concern for the commercial PSBs to address. In July 2018 Ofcom asked the commercial PSBs to develop and share their plans to address Ofcom's concerns. The commercial PSBs responded in early 2019, and their plans were welcomed by Ofcom. Ofcom will continue to monitor the broadcasters' implementation of their plans and will work with the industry to ensure young audiences receive a range of high-quality programmes.

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3. *The subscription model incentivises SVODs to produce content which reaches a range of audiences. This is because their success depends on building a catalogue of programmes which—as a whole—appeals to the widest range of potential subscribers, rather than judging success on the size of the audience for a given programme. For this reason, they can take creative risks on individual programmes. They have also made effective use of personalisation. (Paragraph 77)*

4. *Some witnesses argued passionately that there was a problem with BAME representation in the TV sector, especially at the BBC. They cited employment data, reports of discriminatory practices and poor practices in the commissioning process. We note that the BBC and others are taking steps to address this. We believe that there is not enough data for us to opine on the substance of this issue. Nonetheless, perception is of paramount importance in this context and data show that BAME viewers spend less time watching PSBs than others. (Paragraph 78)*

5. *As with other areas of the creative sector, the uncertain nature of freelance work and lack of adequate careers guidance present barriers to people from less advantaged backgrounds and BAME people from entering the TV sector. **PSBs have a special role to play in lowering such barriers. They should do more to involve people from diverse backgrounds in their commissioning processes and behind the camera.** (Paragraph 79)*

6. ***We recommend that Ofcom should report on the diversity of commissioning teams at public service broadcasters to ensure that under-served audiences are represented at all stages of programme development. The Government should empower Ofcom to collect data on the diversity of production crews making programmes for public service broadcasters, whether in-house or independent.** (Paragraph 80)*

**Response:**

The Government agrees that public service broadcasters should do more to involve people from diverse backgrounds in their commissioning processes and behind the camera. UK television should reflect modern Britain, both on and off screen, and the Government is supportive of Ofcom's work to drive improvements in this area.

Ofcom has a duty to promote equality of opportunity in relation to employment in the broadcasting sector and has powers to ask broadcasters to provide information about their equal opportunities policies and the make-up of their workforce. Ofcom's findings are published in their annual report on diversity and equal opportunities in television.

In July 2019 the Creative Industries Council announced their Diversity Charter, which commits the sector to improving the quality of its diversity data as well as recruitment practices, development, promotion and retention of staff at all levels in order to create a more diverse workforce and develop more output that appeals to people from all backgrounds and regions of the UK.

The Government is also supportive of Project Diamond, which is a diversity initiative backed by the main broadcasters including the PSBs, and collects and publishes the diversity data of people working on or off screen on all UK-originated productions. The Government recognises the challenges facing Project Diamond and encourages the industry to work together to make this data more readily available.

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7. *An important way in which public service broadcasters can fulfil their remit of appealing to all audiences is through 'event' television such as sport, landmark drama and documentary series and live entertainment. At a time of division, public service broadcasters play a role in unifying the country through shared experiences. (Paragraph 93)*

8. *The listed events regime provides important protection for the availability of major sports events. **The Secretary of State for Digital, Culture, Media and Sport should consult sporting bodies, broadcasters and the public with a view to increasing modestly the number of listed events.** This could include events such as The Ashes and The Open Golf Championship. We welcome the Government's plans to add equivalent women's events and the Paralympic Games to the list. (Paragraph 94)*

**Response:**

The Government agrees that part of the remit of public service broadcasting is to foster shared national experiences and that this delivers wider social benefits for the whole country. The Government is therefore supportive of the listed events regime and believes that the current regime, and the list itself, strikes an appropriate balance between retaining free-to-air sporting events for the public while allowing rights holders to negotiate agreements in the best interests of their sport. As such, the Government does not plan to review the list.

In relation to the Committee's specific recommendation, it is worth noting that the list already includes The Ashes and The Open Golf Championship, which are both

listed as group B events. This ensures that delayed coverage and/or highlights packages are available for qualifying free-to-air channels.

However, the Government recognises that more can be done to promote diversity and equality in sports broadcasting. Creating a more inclusive listed events regime is one way of achieving this. The Government has therefore recently announced the addition of the Paralympic Games to group A of the list. The Government has also consulted statutory consultees on the potential addition of women's equivalents of men's events on the list, to further increase the inclusivity and diversity of the list, and will set out next steps in due course.

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### **TV production**

9. *TV which reflects UK culture is in demand at home and abroad. However, changes in the market may make the future of individual SVODs and TV services uncertain. New entrants complement but cannot replace public service broadcasters, which guarantee continued investment in a wide range of original UK content no matter the state of the global market. (Paragraph 106)*

10. *It is important that UK TV programmes of cultural significance are preserved for future generations irrespective of whether they are made by a public service broadcaster. **The Government should broaden the requirement to provide programmes to and fund the BFI National Archive to non-public service broadcasters and SVODs which produce content in the UK.** (Paragraph 109)*

### **Response:**

National archives are the gateway to our national heritage. Their screen remit includes the preservation, restoration and dissemination of culturally British screen content, so that it can be appreciated by current and future generations. The government recognises this should include programmes and films produced or commissioned by non-public service broadcasters and SVODs, some of which are as integral to the UK's film heritage as PSB outputs. The Government hopes that these entities share a desire to contribute to British heritage in this way and strongly encourages these entities to entrust guardianship of their screen content to the BFI National Archive, making a 'reasonable contribution' to the BFI. The Government will monitor progress in this regard and remains open to considering the full range of options to deliver this outcome, including statutory support for collecting as currently exists for the PSBs.

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11. *High-end TV Tax Relief has benefited the UK production sector and encouraged high levels of inward investment. However, there is a serious risk of the sector reaching full capacity and overheating. The health of the independent production sector depends on maintaining the supply of production crews to meet demand. The £1 million threshold for tax relief creates an incentive for productions with a budget over £800,000 to spend more to receive up to £200,000 in tax relief. This makes it less attractive to produce mid-budget drama, which is crucial to the development of skills in the production sector. **High-end TV Tax Relief should be***

***tapered in from £800,000 to remove the incentive to spend more to reach a cost of £1 million per hour. (Paragraph 116)***

**Response:**

The Government is committed to ensuring the UK remains the best place in the world to make films and programmes, including through the adequate provision of both production space and crews. The Government has also committed to maintaining support for creative sector tax reliefs. The high-end TV tax relief has successfully supported the production of internationally-celebrated and award-winning British and European content since its introduction in 2013, with a total of £821 million paid out in response to 770 claims in that period. *Fleabag*, *Killing Eve* and *Bodyguard* are amongst the programmes aired by a public service broadcaster which benefited from tax relief and represent the high-quality British content that the measure is aimed at supporting.

HM Treasury keeps all tax reliefs under review to ensure they remain well-targeted towards their policy aims and represent good value for money for the taxpayer. The policy aim of the tax relief remains incentivising the production of specifically high-quality television programmes and therefore the Government is not considering lowering the £1million expenditure threshold at this time.

The Government recognises the need to boost the skills needed to meet rising demand from productions of all sizes. However, it does not consider that a tax relief is the appropriate mechanism to achieve this. The Government considers it to be more effective to fund, for example, the BFI, ScreenSkills and the National Film and TV School to deliver skills programmes tackling talent pipeline as well as progression and diversity issues such as the BFI Film Academy and Centres of Excellence, and has also committed £2 million to the Creative Careers Programme, through the Industrial Strategy's Creative Industries Sector Deal.

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12. ***The Apprenticeship Levy has failed the creative industries. Its inflexibility leaves significant amounts of money unspent which could otherwise help to address skills shortages in the production sector. We welcome the Government's pilot with Screenskills but **fundamental reform of the Apprenticeship Levy is necessary and urgent. The Government should introduce greater flexibility such as allowing businesses to use the levy to fund training programmes at work and apprentices' wages, and to pool vouchers through training agencies.** (Paragraph 123)***

13. ***The Government should make contributing to the ScreenSkills High-end TV Skills Fund a condition of receiving High-end TV Tax Relief. The Government should consult ScreenSkills on increasing productions' percentage contribution to the fund. (Paragraph 124)***

**Response:**

We recognise that some employers in the creative industries experience challenges in utilising the apprenticeship levy to support starts in their business or the wider sector. The levy is at the centre of our reforms to build an employer-led apprenticeship system, and transform the quality of apprenticeship training. We

continue to engage with employers in all sectors of the economy to help employers realise the benefits of apprenticeships. In the creative sector, we work closely with industry bodies such as the Creative Industries Council, Creative and Cultural Skills, and ScreenSkills.

In response to this engagement, we introduced transfers in 2018 to offer employers greater flexibility, and in April 2019 increased the cap from 10% to 25% of employers' funds per year. Levy-paying employers can already transfer funds to an Apprenticeship Training Agency (ATA), which acts as the apprentice's employer throughout their training.

The Government has also worked with ScreenSkills on an innovative film and TV apprenticeships pilot which will enable around 20 apprentices to benefit from hands-on experience on the sets of major films and TV shows. It will explore a new model for how high-quality apprenticeships can be used to deliver multiple placements on film and TV productions, as well as addressing skills shortages.

There is no 'voucher' system for apprenticeship training: levy-payers use an award-winning digital service to view and manage their funds. We have no plans to introduce pooling of levy funds, but will continue to engage with employers and key industry stakeholders to understand how the levy can best support a strategic approach to addressing skills needs through apprenticeships. We are also clear that levy funds cannot be used to subsidise apprentice wages. Apprenticeships are jobs and employers must meet apprentice wage costs as they would for any other employee.

The Government does not consider it appropriate to make a contribution to the ScreenSkills High-end TV Skills Fund a condition of receiving High-end TV Tax Relief. The Government will continue to encourage contribution, but compliance on the voluntary High-End TV Skills Fund is already nearly 100%. Whilst compliance on its sister fund, the Film Skills Fund, is lower (last year it was 69%), the Government has been working with ScreenSkills to present a strategic vision for future screen skills in the UK and how this could be funded.

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14. *Public service broadcasters are essential to the independent production sector and the Terms of Trade encourage independent production companies to work with them. Their success relies on both PSBs and the production sector being willing to update the Terms of Trade as the market changes. (Paragraph 131)*

15. ***As part of its review of public service broadcasting, Ofcom should consider whether the Terms of Trade unfairly disadvantage public service broadcasters in a competitive market. The Terms of Trade were originally introduced to protect independent production companies from the dominance of public service broadcasters. Given the degree of consolidation in the market, in order to uphold their original purpose of protecting small and medium sized independent production companies, Ofcom should review whether the Terms of Trade should still apply to larger companies. (Paragraph 132)***

## Response

In 2015, Ofcom conducted a review of the Terms of Trade at the request of the Government and concluded that there was no need for change. It concluded that deregulation would create fewer opportunities for new creative talent to get programmes on air, and could therefore lead to a loss of diversity and plurality in the supply of programmes to PSBs, as well as potentially also increasing the degree of vertical integration of broadcasters and producers.

The Government has encouraged Ofcom to be bold and ambitious in its approach to its current PSB Review. However, the scope and terms of Ofcom's review, and whether it will consider the Terms of Trade as part of this work, is a matter for Ofcom as the independent regulator.

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16. *Public service broadcasters are vulnerable to cost inflation if skills shortages are not addressed, but they can still afford to make high-quality, distinctive British programmes. Public service broadcasters have benefitted from record levels of third-party funding: from co-productions with SVODs, co-productions with non-SVODs and deficit financing. However, we heard concerns from industry figures that third-party funding could decline in future once broadcasters have become dependent on it. Losing this funding would pose a serious danger to public service broadcasters and impair their ability to produce high-quality programmes. It would also damage the independent production sector. In a fast-changing market public service broadcasters' access to third-party funding for programmes for UK audiences should be kept under review. **We do not support proposals for a levy on SVOD subscriptions at this time, but we would expect Ofcom to assess the merits of a levy if the situation changes and to make recommendations accordingly. With the support of the Government, Ofcom should closely monitor emerging data and the impact of similar measures in other jurisdictions.** (Paragraph 158)*

## Response:

As outlined its consultation on proposed plans for implementing the Audiovisual Media Services Directive, the government agrees that a levy on subscriptions to video on-demand services is not appropriate at this time and has no plans to introduce one. However, the Government will keep the situation under review.

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17. *Producing programmes across the UK spreads the economic benefits of TV production and helps to ensure that viewers feel represented. Public service broadcasters have a crucial role in supporting regional production. Progress has been made and centres such as Salford, Cardiff and Glasgow have been highly successful. However, it is important to develop further production beyond metropolitan hubs. **Regional production must support production companies whose main office is not in London and involve commissioning decisions being made in the regions and nations themselves.** (Paragraph 171)*

**18. Ofcom should ensure that public service broadcasters uphold the spirit of regional production quotas to aid the development of regional skills and production companies based in different nations and regions. (Paragraph 172)**

**Response:**

The Government shares the Committee's view that public service broadcasters play an important role in ensuring the broadcasting system properly provides for the whole country. The Government agrees that regional production should support production companies outside of London, and that commissioning decisions being made in the regions and nations is vital to ensure the proper representation and reflection of audiences around the UK. The recent television shows *His Dark Materials* being produced in Cardiff and *Game of Thrones* in Belfast are excellent examples of how both PSBs and commercial non-PSBs can support regional production companies.

The Government is supportive of a broadcasting system that supports balanced economic growth, stimulates regional creative industries and provides for audiences across the whole of the UK. In 2017 the PSBs spent around £1.1bn on network and regional programme commissions made outside the M25, delivering 6,453 hours of new network content, which accounted for almost half (49%) of all the PSBs' total qualifying network hours.

The Government strongly supported Channel 4's package of measures to increase its regional impact, announced in 2018. This included having 300 roles outside London and setting up its national HQ in Leeds, with smaller hubs in Bristol and Glasgow, and increasing its proportion of out-of-London commissions to 50% by 2023.

Government-commissioned economic analysis found that this regional package could have an estimated overall regional benefit of around £390m (GVA) and 4,900 jobs. The Government also welcomes the BBC's recent commitment to increase to two-thirds the proportion of its staff out of London.

The Government notes that in December 2018, Ofcom consulted on whether its guidance on regional TV production and programming required updating. In June 2019 it published a statement on the changes it intends to make as a result of its findings. The Government welcomes Ofcom's work in this important area.

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**19. The Government should review regional investment funds to determine how they could be made more flexible to work better for the creative industries. This must be part of a comprehensive strategy to include all regions and nations in the success of the TV production sector and make sure the benefits of growth are spread across the country. (Paragraph 173)**

**Response:**

The Creative Industries are an important driver of local and regional growth and development. In 2017, the Creative Industries spent £49bn outside London. Creative Industries are worth more than automotive, life sciences and aerospace combined. It

is the fastest growing sector within the wider economy; with employment increasing at four times the rate of the wider economy. 47 Creative Industry clusters outside London have been identified by NESTA e.g. Salford's MediaCity, Leamington Spa and Dundee for Video Games.

The Creative Industries Sector Deal, published in 2018, set out a number of measures to rebalance growth for the Creative Industries outside London and the South-East. This included an £80m Creative Clusters Programme - 9 clusters receiving R&D funding as part of the Industrial Strategy Challenge Fund. The Government remains committed to rebalancing growth across the UK economy and will ensure that any regional investment funds are workable for the Creative Industries, including the TV production sector.

In October 2019, £250m of funding for a Cultural Investment Fund (CIF) was announced (and subsequently included in the Conservative election manifesto), focused on regional cultural infrastructure, which included (among other things) £90m for an extension to the existing Cultural Development Fund (CDF) and £125m to regional and civic museums and libraries for essential maintenance of museums and for the digital transformation of libraries.

Existing CDF was launched in 2017 as part of the Creative Industries Sector Deal. The CDF1 projects are forecasted - by their own estimates - to create over 1000 jobs, train 3000 people, support over 700 businesses and leverage £17.5m of additional public or private investment. It has been agreed with HMT that CDF2 will build-off the learning from CDF1 and a public commitment has been made to fund over 20 projects over the next 5 financial years, from FY2020-21. As in CDF1, applicants will be expected to demonstrate how their projects will create economic impact, including job creation and GVA.

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### **Towards a new PSB compact**

20. *While the arrival of SVODs has created exciting opportunities for the creative sector and for audiences, particularly in drama, we are concerned by the unpredictability of future developments. PSBs provide a stable investment platform for a diverse range of content, made for UK audiences, and freely available on a reliable over the air platform. While ensuring that they are properly held to account for delivering PSB purposes, **the Government should support PSBs in the new technological environment, and think very carefully before imposing any further regulatory or financial burdens** which might impinge on their ability to fulfil their public service obligations to viewers. (Paragraph 177)*

### **Response:**

The Government is supportive of a modern PSB system that can continue to meet the needs of UK audiences in the future.

Ofcom's PSB Review will play an important role in strengthening our understanding of how PSB, and the regulatory framework which supports it, can adapt to ensure the system's continued resilience in the changing technological environment.

The Government's consideration of reform will take into account changing technology, as well as wider developments in areas such as audience habits and expectations, and the overall structure of the market. Any additional financial or regulatory burdens would need to be considered as part of the overall impact of any wider package of reform, in ensuring a modern, sustainable and successful PSB system.

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21. *The BBC needs to have the power to innovate at speed without undue regulatory burdens or it risks becoming a minor player in the face of dynamic, well-resourced global competitors. **Ofcom should ensure that regulation is sufficiently fast-paced** while also protecting the rights of other broadcasters. In return, **the BBC should be upfront and open with Ofcom about any proposed changes.** (Paragraph 183)*

**Response:**

The Government considered the appropriate regulatory framework for the BBC during Charter Review 2015-16 and the new Charter introduced Ofcom as the independent external regulator for the BBC. The White Paper noted that Ofcom represented 'a strong regulator to match a strong BBC' as set out in the findings of the Clementi Review; it had experience with the broadcasting sector and already fulfilled some regulatory functions in regard to the BBC.

This new BBC regulatory regime has only been in effect since April 2017. In this time, Ofcom has issued several reports which firmly hold the BBC to account on a range of issues, including with regard changes to its public services. The most recent Ofcom annual report on the BBC was published in October 2019.

Given the need for regulatory certainty and stability, it is crucial that we allow sufficient time for the new arrangements to bed in before considering any changes. The Government believes that the Charter mid-term review, due to take place by the end of 2024, is the appropriate milestone to consider whether the current regulatory arrangements for the BBC are working effectively and whether any reforms are necessary.

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22. *The licence fee is the guarantor of the BBC's financial independence and underpins its unique quality. A subscription model would undermine the fundamental principle of universality that the BBC should be free-to-air. (Paragraph 201)*

23. *We are concerned that the integrity of the licence fee has been undermined by a succession of settlements which were carried out in secret and which have tended to disadvantage the BBC. The decision on whether to provide free licences to the over-75s is a matter of welfare policy. The BBC should not have been asked to take on this decision, and the BBC should not have accepted it. **Responsibility for licences for over-75s should be off the table in future licence fee negotiations.** (Paragraph 202)*

24. ***We reaffirm our recommendation that there should be an independent and transparent process for setting the licence fee. To this end, we recommend that the Government should establish an independent body, which we would call the BBC Funding Commission, to oversee the process for setting the licence fee. In the current competitive and fast-moving environment the BBC needs to be properly funded. The BBC Funding Commission should consult widely on the BBC's role and functions, taking account of all its duties and privileges, and public expectations, before making a recommendation to the Secretary of State. The BBC's responsibilities to serve both young and old audiences, to compete with big tech and to remain a source of soft power, require a generous settlement. (Paragraph 203)***

25. ***This should be implemented by 2021, in time for the mid-Charter review and the next round of negotiations on the licence fee. We do not propose any changes to the current settlement in the meantime, but we expect that any deficits incurred would be considered by the Funding Commission as part of its review. (Paragraph 204)***

**Response:**

The licence fee funding model was considered as part of Charter Review 2015-16, during which the Government committed to maintain the licence fee funding model for the BBC for the duration of the current Charter period, lasting until the end of 2027.

The Government has no plans to introduce a Licence Fee Commission, and it believes it remains appropriate to determine the level of the licence fee in discussions with the BBC as part of the licence fee settlement process. However, in the White Paper 'A BBC for the future: a broadcaster of distinction', the Government recognised the importance of greater transparency in future settlements. The next licence fee settlement process will cover the period from 2022-27. The Government will set out more detail on the process to be followed in due course.

Section 89 of the Digital Economy Act 2017 provides that the BBC is responsible for the future of the over 75s TV licence fee concession. This reform was subject to public discussion and debated extensively during the passage of the Digital Economy Act through Parliament.

The BBC announced in June 2019 that only people who are aged 75 and above and in receipt of Pension Credit will continue to receive a free television licence from June 2020. The Government has made clear that it is disappointed with the BBC's decision to restrict the over 75 licence fee concession to only those in receipt of pension credit. The Government recognises the value of free TV licences for over-75s and believes they should be funded by the BBC.

On the issue of the TV licence, the Government has said we will review whether TV licence evasion should be decriminalised. The Government has issued a consultation on this subject and will consider responses carefully before setting out the next steps.

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26. *We recommend that Ofcom should review the adequacy of the broadcast and non-broadcast codes in respect of video advertising with a view to making recommendations to reduce the difference of regulatory burdens between broadcasters and on-demand services. **Following the UK's departure from the EU, the Government should implement provisions of the Audio-visual Media Services Directive on advertising to ensure a level playing field.** In doing so, it should make video-sharing platforms responsible for the advertising that they display. (Paragraph 211)*

**Response:**

Under the terms of the Withdrawal Agreement, the UK will be required to implement the latest revised Audiovisual Media Services Directive (AVMSD), as its implementation date (19 September 2020) falls prior to the end of the Implementation Period.

The Government consulted on proposed plans for implementation through consultations closing on 22 August and 17 September 2019, respectively. The response to these consultations will be published shortly.

A number of areas addressed by the Directive are already subject to domestic policy initiatives. The Government intends to introduce regulation of video-sharing platforms (with the exception of commercial communications that are not in scope of the Online Harms work) through the future Online Harms regulatory regime. The issues related to the advertising requirements by the Directive are complex and DCMS will consider many of those within the framework of the department's work on online advertising. This work will consider the extent to which the current regulatory regime is equipped to tackle economic and social challenges posed by online advertising. It will also consider the regulatory approaches for both broadcast and non-broadcast advertising (including online), to ensure that regulation keeps pace with the changing market. There will be an initial period of evidence gathering through a Call for Evidence which will be launched shortly, alongside a period of stakeholder engagement in the first half of 2020.

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27. *Children's health is of the utmost importance and we share concerns that more needs to be done to reduce childhood obesity. We note the role public service broadcasters play in promoting healthy living and feel that consideration should be given to enhancing this role, including looking at evidence from other countries. However, **we do not think that there is sufficient evidence that the proposed ban on high in fat, salt and sugar advertising before the 9pm watershed would significantly reduce childhood obesity.** We are concerned that such a blanket ban could undermine the funding model of commercial broadcasting in the UK without delivering significant benefits to children's health. A ban might also be counterproductive if manufacturers divert advertising spending to fund price promotions. There would be a further risk if the ban is not sufficiently targeted at what would normally be considered 'junk food' but it indiscriminately includes products such as olive oil that are part of a healthy diet. (Paragraph 219)*

28. **However, if evidence emerges to the contrary, the Government should act quickly to implement a ban.** In doing so, it should ensure a level playing field between broadcast and online advertising. Any broadcast ban must be matched by measures which have equivalent effect online and the Department for Digital, Culture, Media and Sport should be consulted at all stages of policy development on this issue. (Paragraph 220)

**Response:**

The Government agrees that everyone has a role to play in tackling childhood obesity, including broadcasters. The Government notes that they already seek to use their reach with large audiences to promote healthy eating and physical activity, and it welcomes the investment of airtime being made by ITV, Channel 4 and Channel 5, together with Sky, in campaigns aimed at encouraging children to eat more vegetables and encouraging primary schools to participate in the Daily Mile.

The Department for Digital, Culture, Media and Sport consulted jointly with the Department for Health and Social Care last year on introducing further restrictions on TV advertising of HFSS products and similar protection for children viewing adverts online. Despite strict restrictions already being in place to prohibit HFSS product advertising around children's programming, evidence suggests they are still exposed to significant levels of HFSS advertising.

Through the consultation the Government invited views on its assessment of the impact that any further restrictions would have on broadcasters. The consultation discussed a more targeted definition of which food and drink products should be considered HFSS for the purposes of any further restrictions, to avoid the risk of any ban inadvertently bringing into scope food and drink which does not contribute significantly to childhood obesity.

A significant number of detailed responses to the consultation were received and the Government continues to assess them. The Government will set out its response to the consultation and next steps in due course.

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29. *The right to be displayed prominently is a key privilege of public service broadcasters. The current regime is centred on linear TV, which will increasingly devalue over time. We believe that it is more important that PSBs are easy to find in a fragmented media environment, not less. We welcome and endorse Ofcom's recommendation that the prominence regime be updated for the digital age to reflect new ways of accessing content. **The Government should introduce legislation to implement a new prominence framework in line with Ofcom's recommendations.** The regime should be based on principles so that it can adapt as technology changes. (Paragraph 238)*

30. *PSBs must be enabled to maintain a direct relationship with viewers in an on-demand world. PSBs should not be forced to disaggregate programmes if they do not consider it a useful way to reach viewers and their content is not clearly attributed to*

them. We welcome the BBC's interest in using artificial intelligence for its public service algorithm. (Paragraph 239)

31. ***In line with Ofcom's recommendation, PSB content hubs should be given prominence on platforms provided that PSBs ensure that public value content, such as news, current affairs, and children's content, are given prominence within their hubs. This reflects the current situation in which PSBs are required to broadcast news during peak times. (Paragraph 240)***

**Response:**

The Government recognises the importance of high-quality PSB content being discoverable and widely accessible to viewers as far as possible.

Under the Digital Economy Act 2017, the Government required Ofcom to publish a report which looks at the ease of finding PSB content across all platforms. In 2018 Ofcom consulted on how the prominence regime may need to change to ensure public service content remains discoverable regardless of how consumers are accessing it. Ofcom published its report and recommendations in July last year, including recommendations for legislation.

The Government has committed to act on Ofcom's prominence recommendations and is exploring the potential for legislation. The Government will set out next steps in due course.

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32. ***Free to air and free at the point of use are key attributes of public service broadcasting. PSBs should continue to be required to offer their content across all TV platforms. But we are concerned that the way in which technology can be used to deprive PSBs of advertising revenue suggests a lack of balance in the arrangement. To counter that imbalance, we recommend that Ofcom should be empowered to review the 'must offer, must carry' regime to ensure that it is adequate as TV moves online. In particular, it should consider whether TV platforms should be required to pay a reasonable retransmission fee to compensate commercial public service broadcasters. If so, the quantum of the fee should be determined by Ofcom on a periodic basis. (Paragraph 247)***

**Response:**

The scope and terms of Ofcom's ongoing PSB review and whether this will give consideration to 'the must offer, must carry' regime is a matter for Ofcom. However, as set out earlier in this response, the Government has encouraged Ofcom to be ambitious and innovative in its approach to its PSB review and to explore the issues that it considers relevant. This may include looking at whether the balance between benefits and obligations remains appropriate in the relationship between the PSBs and platform providers. The Government will continue to work closely with Ofcom over the coming months and will consider Ofcom's recommendations when they are made.

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33. *Digital terrestrial television (DTT) will remain a major way for people to access linear television. **The Government and Ofcom must ensure the continued provision of free spectrum for PSB output through DTT.** (Paragraph 251)*

**Response:**

The Government recognises the value of Digital Terrestrial Television (DTT) to many audiences, and therefore to the future of the PSB system. Several DTT multiplex licences are set to expire in the coming years and the Government is considering how to ensure that any changes to the DTT regime are proportionate, evidence-based and fit for purpose. Next steps will be set out in due course.

12 February 2020