

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

**BBC OVER-75 TV LICENCE SCHEME: EXTENDING RELEVANT PARTS OF THE
COMMUNICATIONS ACT 2003**

The States are asked to decide:-

Whether, after consideration of the Policy Letter dated 21st November, 2019, of the Policy & Resources Committee, they are of the opinion:-

1. To agree that section 365A, and such other provisions of the Communications Act 2003 as amended (including as amended by the Digital Economy Act 2017) relating to TV licence fee concessions by reference to age as it may be necessary or expedient to extend, should be extended by Order in Council to the Bailiwick with such modifications as appear to Her Majesty in Council to be appropriate, following consultation with the Policy & Resources Committee.

The above Proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

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The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

21st November 2019

Dear Sir

1. Executive Summary

- 1.1. As a result of the UK Government's decision in 2015 to transfer responsibility to the BBC for both setting and funding the UK's over-75 age TV licence concession scheme ('the over-75 scheme') from June 2020, the States of Guernsey made similar arrangements with the BBC in December 2016. This was agreed by the Committee *for* Employment & Social Security following consultation with the Committee *for* Economic Development and the Policy & Resources Committee.
- 1.2. The States of Deliberation had earlier resolved, in October 2015, to close its own over-75 TV licence concession scheme to new entrants. The scheme, developed in 2001, was provided by the Committee *for* Employment & Social Security for Guernsey and Alderney residents and funded from General Revenue (at a cost of £624,000 in 2015). It was closed to new entrants from 1st September 2016. As part of the future policy and funding arrangements with the BBC, transitional provisions were agreed to share the cost of funding the scheme between the States of Guernsey and the BBC during 2018 and 2019, prior to the BBC taking full responsibility for setting and funding the over-75 scheme from 1st June 2020.
- 1.3. In June 2019, the BBC announced its decision on the future of the over-75 scheme for UK residents. From June 2020, the universal benefit will cease but a free TV licence will be issued to any household with someone aged over 75 who

receives Pension Credit. The BBC's decision does not automatically extend to the Bailiwick and therefore the broadcaster must make a separate decision regarding any future concession scheme for Bailiwick residents.

- 1.4. The UK Digital Economy Act 2017 ('the Digital Economy Act') amends the UK Communications Act 2003 ('the Communications Act') with effect from 1st June 2020 to provide the BBC with the necessary powers to set the policy for the provision of any age-related concessionary TV licences, including the power to amend the eligibility criteria for any such concession. Parts of the Communications Act, including provisions relating to TV licensing, already extend to the Bailiwick by Order in Council. The States are now asked to approve the further extension of relevant parts of the Communications Act (as amended by the Digital Economy Act) to provide the BBC with the necessary power to set the policy for the provision of any age-related concessionary TV licences within the Bailiwick, ensuring Bailiwick residents are treated on an equal basis to UK residents. This would enable the BBC to fulfil the commitments it made in 2016 when agreeing to take responsibility for setting and funding the over-75 age concession.
- 1.5. Outside the scope of the over-75 scheme, the States of Guernsey funds the provision of a TV licence to Guernsey and Alderney residents over pensionable age (currently 65) who are in receipt of income support. The Committee *for* Employment & Social Security has confirmed it has no plans to alter this separate scheme. Given the operation of this scheme, it is expected that the cost of providing free TV licences for residents over 75 years of age in Guernsey and Alderney who receive income support would fall to that Committee in the absence of any future BBC funding.

2.0. Background

- 2.1. In the United Kingdom, the Isle of Man and Channel Islands, any household watching or recording live television transmissions as they are being broadcast (terrestrial, satellite, cable or internet) is required to hold a television licence. A TV licence is also required to receive video-on-demand programme services provided by the BBC on its iPlayer catch-up service. The TV licence was introduced in 1946 with powers for its establishment contained within the Wireless Telegraphy Act 1904. This Act has since been amended and superseded, with relevant powers relating to TV licences extended to the Bailiwick over the years by the States of Deliberation – most recently by extending Part 4 of the Communications Act 2003.

- 2.2. In July 2015, during the UK post-election budget, the then Chancellor of the Exchequer announced that the UK Government would pass to the BBC the policy and funding responsibility for the age concession scheme whereby persons over the age of 75 were entitled to a free TV licence. A staged transition from 2018 to 2020 was agreed. The change to responsibility for the over-75 scheme captured UK licence fee payers only and did not extend to the Bailiwick of Guernsey (nor to Jersey nor the Isle of Man).
- 2.3. In October 2015¹, the States of Deliberation resolved² to end the Guernsey and Alderney over-75 age concession scheme to new entrants (Sark residents were not included in the scheme as that island is not part of the same benefits system). The scheme was closed to new entrants on 1st September 2016. Anyone aged 75 or more before 1st September 2016 who was already in receipt of a free TV licence has continued to receive one. The October 2015 policy letter stated:
- “The appropriateness of continuing to provide universal benefits, such as the provision of free TV licences, was considered by the Social Security Department and the Treasury and Resources Department as part of the Personal Tax, Pensions and Benefits Review. As age is not necessarily an indicator of low income and this service is provided to many who could better afford a TV licence than some who do not receive one, it was the view of the Joint Board that this benefit could be withdrawn with minimal impact to the individuals concerned.”
- 2.4. Following the UK Government’s decision to transfer responsibility for setting and funding the over-75 age concession to the BBC, discussions were held between representatives of the States of Guernsey and the BBC about how best to ensure fairness for all licence fee payers, including those in the islands. An agreement was reached in December 2016 between the BBC and the States of Guernsey to transfer to the BBC responsibility for both funding and setting the terms of the over-75 scheme for Bailiwick residents from June 2020, replicating the decision made in the UK. This agreement preserved the principle of equal treatment for all British licence fee payers.
- 2.5. A transition arrangement was agreed whereby the BBC would part-fund the States of Guernsey’s existing over-75 licence concession scheme. The BBC agreed to fund one-third in 2018 (£225,000) and two-thirds in 2019 (£452,000). This funding arrangement is due to stop in 2020 when the BBC takes on full cost and

¹ Billet d’Etat XVIII, 27th October 2015, Social Security Department – Benefit and Contribution Rates for 2016: <https://gov.gg/CHttpHandler.ashx?id=98327&p=0>

² Resolutions, Billet d’Etat XVIII, 27th October 2015: <https://gov.gg/CHttpHandler.ashx?id=99104&p=0>

policy setting responsibility. Below are extracts from a letter from the BBC to the President of the Committee *for* Economic Development, in December 2016, outlining the agreed position:

“An existing Agreement between the BBC and Guernsey for the provision of broadcasting services made on 15th December 2006 is due to expire on 31 December 2016. The BBC wishes to give assurances and express its intentions for the continued provision of broadcasting services in the Bailiwick in the future, express its expectations in relation to the continuation and updating of the licence fee framework in the Bailiwick by the States of Guernsey, and set out its intentions and expectations in relation to future arrangements for the determination and funding of age-related concessions for the television licence in the Bailiwick (excluding Sark). The BBC’s proposals are offered in accordance with its obligations under the 2016 Charter and the 2016 Agreement. The BBC must be independent in all matters concerning the fulfilment of its Mission and the promotion of its Public Purposes, particularly as regards editorial and creative decisions, the times and manner in which its output and services are supplied, and in the management of its affairs.

Clause 78 of the 2006 Agreement provides for the BBC to receive compensation from the UK Department for Work and Pensions for issuing TV licences in the UK for which, in accordance with regulations made under section 365(1) of the 2003 Act, no fee is payable. The States of Guernsey compensate the BBC directly for concessionary licences issued under the Regulations in the Bailiwick too, i.e. for those in the Bailiwick (excluding Sark) who qualify having reached 75 by 1st September 2016. Direct compensation is not provided for TV licences issued under the Bailiwick’s means tested scheme, as the States of Guernsey fund these licences via the Guernsey Post Office, allowing the BBC to collect payment through that route. Her Majesty’s Government decided in July 2015 to transfer to the BBC, on a phased basis from 1 April 2018, the cost of providing free TV licences in the UK. In addition, the Digital Economy Act (“DEA”) will, if enacted in its current form, provide for the BBC to have the power, and will remove from the Secretary of State the power, to set the policy for the provision of any age-related concessionary television licences, where the relevant age is 65 years or more, from 1 June 2020, currently in the UK only, including the power to amend the eligibility criteria for any such concession.

In the context of the above, and in return for seeking from the States of Guernsey the assurances and expression of intentions detailed below, the BBC gives assurances and expresses the following intentions. The expression of the following intentions by the BBC in this letter should not be taken to extend beyond the end of the period of the BBC's agreed funding settlement to 31 March 2022. Given the acknowledgement by the BBC (below) that the States of Guernsey cannot purport to bind the legislature of any Bailiwick jurisdiction or of any United Kingdom authority or body, in the event that the States of Guernsey fail to deliver on any of its assurances, the BBC reserves the right to choose not to honour one or more of the following assurances.

(1) The BBC expresses its intention to share the cost on a phased basis of:

- a. the age-related concession scheme for those persons in Guernsey and Alderney aged 75 years or more on 1st September 2016, and
- b. the age-related, means-tested concessionary TV licences for those persons in Guernsey and Alderney who reach the age of 75 on or after 1st September 2016,

as this is reflected in the States of Guernsey note to the BBC dated 26th October 2016 ("Note"). BBC cost-sharing will be on a phased basis from 1 April 2018. The BBC will share one third of the cost of free TV licences in categories a. and b. above in 2018/2019, two thirds in 2019/2020 and be responsible for the full cost in 2020/2021.

The States of Guernsey will be responsible for reimbursing the BBC for the balance between the BBC contribution and the total cost of free licences. In effect, this means that the States of Guernsey would refund to the BBC the cost of the concessions, minus the BBC's share (see Guernsey assurance (5) below).

The BBC contribution for 2018/19 and 2019/20 will be £225,000 and £452,000 respectively (assessed on the basis of eligibility figures the BBC holds for 2015/16, adjusted to account for recent changes in eligibility as set out in the Note and to account for estimated growth in the number of households) but uprated for inflation in due course on the same basis as the licence fee. The figure for 2020/21 (to be assessed on the figures the BBC holds for 2015/16, recent changes in eligibility as set out in the

Note estimated growth in the number of households and uprated for inflation) will be subject to the BBC's power to reform eligibility from 1st June 2020."

- 2.6. Separate to the over 75-age scheme, the States of Deliberation agreed in October 2015 to continue funding a scheme whereby Guernsey and Alderney residents of pensionable age (currently 65) who are in receipt of income support receive a free TV licence. The then Social Security Department stated in its policy letter that the withdrawal of the universal over-75 concession scheme would be most keenly felt by low income households, so the retention of a means-tested scheme for those above pensionable age would help those most in need.
- 2.7. The Committee *for* Employment & Social Security has confirmed it has no plans to alter the separate scheme for those above pensionable age on income support, which currently costs about £18,000 per annum.

3.0. June 2020 changes

- 3.1. In June 2019, following the transfer of policy and funding responsibility from the UK Government to the BBC, the broadcaster announced its decision on the future of the over-75 TV licence fee concession scheme for UK residents. From June 2020, the universal benefit will cease but a free TV licence will be issued to any household with someone aged over 75 who receives Pension Credit. In its statement announcing its decision, the BBC stated³:

"The Government's current scheme comes to an end next year and Parliament - through legislation - gave the responsibility to the BBC Board to make this decision. From June 2020 any household with someone aged over 75 who receives Pension Credit will be eligible for a free TV licence funded by the BBC. Around 1.5 million households could be eligible. The BBC Board believes this is the fairest option to help the poorest pensioners. It is also the fairest option for all licence fee payers, as this means everyone will continue to receive the best programmes and services that the BBC can provide. The BBC will not be making judgements about poverty as that measure is set and controlled by Government. The new scheme will cost the BBC around £250 million by 2021/22 depending on the take-up of the new scheme. The cost of this new scheme will require the BBC to divert some spending on programmes and services, alongside continuing to find new savings while expanding its commercial revenue to cope. The decision does, however, prevent unprecedented

³ <https://www.bbc.co.uk/mediacentre/latestnews/2019/over-75s-licence-fees-decision>

closures of services which would have been required had we copied the Government's scheme."

- 3.2. The BBC's decision does not automatically extend to the Bailiwick. The broadcaster must make a separate decision regarding any future concession scheme for Bailiwick residents. Preliminary discussions have been held with the BBC, which has signalled its continued commitment to the principle of equal treatment for all British licence fee payers (including island residents). Guernsey and Alderney do not have a benefit which is directly equivalent to the UK's Pension Credit benefit. The BBC would need to consider this as part of its decision-making on any future concession scheme to apply in the islands. The decision about the scope of the scheme to be applied to the Bailiwick will be a matter for the BBC Board.
- 3.3. Sark has not previously been included in the over-75 age concession scheme, as it is not part of the Bailiwick's benefit system. Sark also does not have a like-for-like benefit to Pension Credit. It is intended to encourage the BBC to consult with Sark before making its final decision on the over-75 age concession for the Bailiwick.

4.0. Legal considerations

- 4.1. The Communications Act, as amended by the Digital Economy Act, provides the BBC with the necessary powers to set the policy for the provision of any age-related concessionary TV licences from June 2020, including the power to amend the eligibility criteria for any such concession. Parts of the Communications Act have been extended to the Bailiwick by Order in Council, including provisions relating to TV licensing, but these recent amendments made by the Digital Economy Act (principally the insertion of section 365A, TV licence fee concessions by reference to age) have not been so extended. Therefore the BBC currently has no legal authority to either set or fund an over-75 age concession for any Bailiwick resident.
- 4.2. The transitional funding arrangement previously agreed, which has seen the BBC and States of Guernsey share the cost of the over-75 concessions, ends in 2020. Without the extension of section 365A and any other necessary related provisions, the BBC would not offer any further funding to Bailiwick residents. This would result in the closure of the existing over-75 scheme, which was closed to new entrants in September 2016, unless a new scheme were to be established and funded by the States of Guernsey.

- 4.3. However, given the Committee *for* Employment & Social Security currently operates a separate scheme for those over pensionable age (currently 65) on income support, it is expected that the cost of providing free TV licences for residents over 75 years of age in Guernsey and Alderney who receive income support would fall to that Committee in the absence of any future BBC funding.
- 4.4. The BBC has indicated its continued support for the principle of fair and equitable treatment of all British licence fee payers. The BBC has also indicated that it will not make a decision about the over-75 concession scheme for Bailiwick residents for the period from 1st June 2020 until it has the necessary legal authority to do so.
- 4.5. The States is asked to approve the extension to the Bailiwick by Order in Council of the relevant parts of the Communications Act as amended by the Digital Economy Act with any necessary minor modifications, with effect from 1st June 2020, to provide the BBC with the necessary power to set the policy for the provision of any age-related concessionary TV licences. This will enable the BBC to fulfil the commitments it made in 2016 when agreeing to take responsibility for setting and funding the over-75 age concession scheme within the Bailiwick.
- 4.6. The situation in the Bailiwick is replicated in Jersey in so far as any decision by the BBC with regards UK licence fee payers does not automatically extend to Jersey. As a result the Government of Jersey is currently in discussions with the BBC about the future provision of age related concessionary TV licenses.

5.0. Consultation

- 5.1. The Committee *for* Employment & Social Security approved in 2016 the transfer of responsibility for the over-75 age concession scheme (policy and funding) to the BBC to ensure the equal treatment of all BBC licence fee payers from 2020 onwards. That Committee's views have now been sought on the need to extend relevant parts of the Communications Act 2003, as amended (including as amended by the Digital Economy Act 2017). The Committee *for* Employment & Social Security stated it supported the proposition of this policy letter.
- 5.2. The Committee *for* Economic Development has mandated responsibility for broadcasting policy and agreed the transitional arrangements with the BBC for funding the scheme in Guernsey and Alderney for 2018 and 2019. That Committee's views have now been sought on the need to extend relevant parts of the Communications Act 2003, as amended (including as amended by the

Digital Economy Act 2017). The Committee for Economic Development stated it supported the proposition of this policy letter.

- 5.3. The States of Alderney has been consulted about extending relevant parts of the Communications Act 2003 as amended (including as amended by the Digital Economy Act 2017) to Alderney. The Policy & Finance Committee said it supported the proposition of this policy letter.
- 5.4. The Chief Pleas of Sark has been consulted about extending relevant parts of the Communications Act 2003 as amended (including as amended by the Digital Economy Act 2017) to Sark. The Policy & Finance Committee said it is content for the legislation to be extended to Sark.

6. Compliance with Rule 4

- 6.1. Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 6.2. In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications. HM Procureur has advised that there is no reason in law why the Propositions should not be put into effect.
- 6.3. In regard to Rule 4(3) of the Rules of Procedure of the States of Deliberation and their Committees, it is not envisaged that additional resources will be required to fulfil the propositions of this policy letter.
- 6.4. In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the Propositions above have the unanimous support of the Committee.
- 6.5. In accordance with Rule 4(5) of the Rules of Procedure of the States of Deliberation and their Committees, the Propositions relate to the duties of the Committee because its mandate includes responsibilities to, "external relations and international and constitutional affairs, which includes: 2. relations with the United Kingdom and other jurisdictions; 4. relations with the other islands of the Bailiwick; 5. representing, or overseeing the representation of, and negotiating for, the Island; [and] 7. executing and requesting the extension of international agreements to which the Island is invited to acquiesce;...".

- 6.6. The Committee's consultation with other parties is outlined in Section 5 above, in accordance with Rule 4(5).

7. Propositions

The States are asked to decide whether they are of the opinion:-

1. To agree that section 365A, and such other provisions of the Communications Act 2003 as amended (including as amended by the Digital Economy Act 2017) relating to TV licence fee concessions by reference to age as it may be necessary or expedient to extend, should be extended by Order in Council to the Bailiwick with such modifications as appear to Her Majesty in Council to be appropriate, following consultation with the Policy & Resources Committee.

Yours faithfully

G A St Pier
President

L S Trott
Vice-President

A H Brouard
J P Le Tocq
T J Stephens