

# Television Licensable Content Services

Guidance notes for licence applicants

Updated: 23 May 2018

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# Introduction

## General disclaimer

- 1.1 These notes are intended to help Television Licensable Content Service (TLCS) licence applicants understand the licensing process. The guidance notes should not be relied upon as legal advice, or be understood as modifying the effect of the statutory requirements or the conditions of the licence.
- 1.2 Applicants should seek their own legal advice on the licensing process and requirements, and when making their own independent assessment on the information that should be included in their application.
- 1.3 In providing the information in these guidance notes, Ofcom is not making, nor implying any judgements on the commercial prospects (or otherwise) of licensed services, or that they will be profitable.
- 1.4 Ofcom makes no representation or warranty, express or implied, with respect to information contained in these guidance notes (together with the standard form licence and other documents referred to in this document) or with respect to any written or oral information made or to be made available to any potential applicant or its professional advisers. Any liability therefore is expressly disclaimed.
- 1.5 Even if Ofcom grants a TLCS licence there is no guarantee that one of the satellite or cable platform providers could or would carry your service/channel. Therefore, you may wish to contact one of the platform providers in the first instance to secure capacity and ask them about any further costs and contractual obligations involved with any arrangements you make with the platform providers. Ofcom cannot provide advice on these issues.
- 1.6 These guidance notes may be updated from time to time. Applicants should check Ofcom's website to make sure they are using the most recent version. Applicants should also be aware that certain key features, such as fees, procedures and content rules, may change in the future.
- 1.7 Application forms must be signed by the duly authorised individual on behalf of the licensee<sup>1</sup> and submitted in hard copy to:  
  
Ofcom  
Broadcast Licensing  
Riverside House  
2a Southwark Bridge Road  
London  
SE1 9HA
- 1.8 If you have any queries you can contact the Ofcom Television Broadcast Licensing team by email ([broadcast.licensing@ofcom.org.uk](mailto:broadcast.licensing@ofcom.org.uk)).

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<sup>1</sup> In the case of: a) a company, this will be the company secretary or clerk; b) a partnership, this will be a partner or another person who is in control of the business; and c) an unincorporated body or association, this will be a member of the organisation's governing body.

- 1.9 You may also wish to read the TLCS Guidance notes for licensees<sup>2</sup> which provides information about the licensing requirements and the conditions that licensees are subject to.

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<sup>2</sup> Available at:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0012/36201/tlcs\\_guidance\\_notes\\_for\\_licensees.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0012/36201/tlcs_guidance_notes_for_licensees.pdf)

# What is a Television Licensable Content Service (TLCS)?

- 2.1 A TLCS is a television service broadcast from a satellite, distributed using an electronic communications network (including services broadcast over the internet), or a service made available by a radio multiplex.
- 2.2 The service must meet two basic criteria:
- i) The service consists of, or has as its principal purpose the provision of, "television programmes<sup>3</sup> or electronic programme guides"<sup>4</sup>, or both.
  - ii) The service is "available for reception by members of the public"<sup>5</sup>. (This does not include on-demand programme services). If a member of the public is able to receive the service (whether free to air, by paying for a subscription or buying a piece of receiving equipment) the service normally meets this criterion<sup>6</sup>.
- 2.3 The following services are **not** covered by a TLCS licence:
- a service provided under the Channel 3, 4 or 5 licence;
  - Freeview (Digital Terrestrial Television "DTT") services (see guidance notes for a Digital Television Programme Service (DTPS) and a Digital Television Additional Service (DTAS)<sup>7</sup>);
  - a local digital television service for a specific geographical area broadcast on Freeview (DTT) via the local television multiplex; these are licensed on a region by region basis;
  - a television multiplex service for the broadcast infrastructure of Freeview;
  - a restricted television service for short term coverage of a specific event at a specific location;
  - two-way services – includes video conferencing and similar services;
  - closed user groups – services only receivable by a specific category of person (for example a professional group) that are not receivable by any other persons, even at a cost;

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<sup>3</sup> "Television programmes" includes conventional programmes, advertisements, text and still and moving images, as well as any ancillary services (like subtitling, audio-description or interactive programme enhancements) associated with them.

<sup>4</sup> "Electronic programme guides" are services that consist of the listing or promotion of programmes and programme services and provide access to them.

<sup>5</sup> As defined in section 361 of the Communications Act 2003.

<sup>6</sup> The detailed statutory framework for licensing TLCS services is set out in sections 232 to 240 of the Communications Act 2003.

<sup>7</sup> Available at: <https://www.ofcom.org.uk/manage-your-licence/tv-broadcast-licences/guidance-for-tv-broadcast-licensees>

- single premise systems – services distributed by means of an electronic communications network only to persons who are within a single set of premises; or
  - broadcasts intended exclusively for reception in countries that are not signatories of the Audiovisual Media Services Directive are not normally licensable by Ofcom.
- 2.4 More information on the different types of television licence, including application forms and guidance notes for applicants, is available on our website<sup>8</sup>.
- 2.5 TLCS licences are granted for a single service, rather than to a service provider. A service provider providing three separate services will therefore need three licences. This also applies to services which utilise only part of a cable or satellite channel or comprise programming spread across a number of channels. There is no limit to the number of TLCS licences which can be held by one company or individual.
- 2.6 Ofcom has published guidance<sup>9</sup> for broadcasters about services broadcast into different territories. This sets out our position on regional advertising or other regional programming. Broadcasters who intend to show feeds of their service into multiple territories should take into account how this additional guidance affects their proposed service and ensure that they apply for a licence or licences accordingly.

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<sup>8</sup> Available at: <https://www.ofcom.org.uk/manage-your-licence/tv-broadcast-licences/apply-for-a-tv-broadcast-licence>

<sup>9</sup> Available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/10437/licensing-position.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/10437/licensing-position.pdf). For guidance on the use of targeted advertising replacement and its effect on a TV service's licensing status and licence requirements please see: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0025/56761/guidance\\_on\\_the\\_use\\_of\\_targeted\\_advertising\\_replacement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/56761/guidance_on_the_use_of_targeted_advertising_replacement.pdf)

# Before you apply for a TLCS licence

*This section contains important information you should take account of before submitting your TLCS application form.*

## Submitting a valid application

- 3.1 The application form for TLCS licences can be found on the Ofcom website<sup>10</sup>. Applications can only be made using this form. Applicants should ensure that they always refer to the most recent version of the guidance notes and application form on our website when submitting their application. We will not accept applications made on previous versions of the application form.
- 3.2 We encourage applicants to download the editable version of the application form from our website and fill it in on a computer. Ofcom will accept handwritten application forms, but they must be filled in using block capitals and black ink. We will not accept illegible application forms.
- 3.3 You must fill in all sections of the application form. If a section is not applicable, you should indicate this by writing “N/A”. The declaration in section 11 of the application form must be signed and dated, and the form submitted in hard copy to the address listed at paragraph 1.7.
- 3.4 Applicants are responsible for assessing whether their proposed service requires a TLCS licence. You may wish to take your own professional advice in order to comply with this obligation. Ofcom cannot determine for you whether you need a licence or not and you should not rely on the guidance provided in these notes.
- 3.5 If you are completing the form as an agent, i.e. you are acting on the applicant company or individual's behalf, please make this clear in an accompanying letter, and provide evidence of your authority to act on behalf of the applicant. The form should be filled in so as to include information about the applicant, not the agent. If there are further clarifications required by Ofcom once the application has been submitted these will be made to the applicant, not to the agent.
- 3.6 The application form must be accompanied by the supporting documents detailed in the checklist (see paragraph 4.42). If an original document is not in English, it should be submitted with a translated copy.

## Determining who should hold the licence

- 3.7 Ofcom considers that a person will normally have general control if that person exercises effective control over the selection of programmes that comprise the service and their organisation into a programme schedule. It is that person who will normally be treated as being the provider of the relevant service and who will need to hold a broadcasting licence authorising its provision. The full guidance document can be found on our website, which applicants should read before applying for a licence<sup>11</sup>.

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<sup>10</sup> Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0027/19179/tlcs-application-form.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0027/19179/tlcs-application-form.pdf)

<sup>11</sup> Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0019/8326/service-provider.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0019/8326/service-provider.pdf)

## Electronic Programme Guides

- 3.8 If the licensed service is an electronic programme guide, it must comply with Ofcom's Code of practice on Electronic Programme Guides<sup>12</sup>, as well as the relevant content rules.

## Timescales

- 3.9 We will normally acknowledge your application within two working days. If an application cannot be considered (e.g. because it is illegible; the correct fee has not been submitted; the applicant has used the wrong form; etc.), we will normally return the application form to the applicant.
- 3.10 As a guideline, our aim is to issue a licence within 25 working days. However, this cannot be guaranteed. Applications are assessed on a first come, first served basis, and during peak periods it may take longer for us to assess applications. The timeframe also assumes that full and accurate information has been provided by the applicant in the application form and accompanying documentation. Applications will not be assessed until all the requested information has been submitted.
- 3.11 Applicants with religious objects are advised to allow approximately eight weeks for their application to be considered by Ofcom in the light of the Guidance for religious bodies applying for a Broadcasting Act licence<sup>13</sup>.
- 3.12 Ofcom has a duty to ensure that it does not license bodies with objects which are of a wholly or mainly political nature. Applications where questions arise on this issue may take significantly longer for Ofcom to consider than other applications.
- 3.13 Ofcom may refuse to issue a TLCS licence if the applicant is not a "fit and proper person"<sup>14</sup>; if the applicant is a "disqualified" person<sup>15</sup>; or if the proposed service would be likely to involve contraventions of the standards for programmes and advertising<sup>16</sup>.
- 3.14 In cases where Ofcom has instigated sanctions procedures against an existing Licensee which may lead to the revocation of any licence(s) it holds, it will not generally consider any applications for new licences by the same licensee or by a person/body connected to that licensee until such time as that aspect of the sanctions procedure is concluded. Similarly, Ofcom will not generally consider transfer applications either to or from a licensee while a sanctions procedure which may lead to licence revocation is ongoing.
- 3.15 To be able fully to consider an application, we may need to request further information or clarification from the applicant. If we don't receive a response to a request for further information within one month, we will consider the application to have lapsed.

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<sup>12</sup> Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0031/19399/epgcode.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0031/19399/epgcode.pdf)

<sup>13</sup> Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0028/88219/Guidance-for-religious-bodies.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0028/88219/Guidance-for-religious-bodies.pdf)

<sup>14</sup> Under section 3 of the Broadcasting Acts 1990 and 1996.

<sup>15</sup> Under Schedule 2, Part II of the Broadcasting Act 1990.

<sup>16</sup> See paragraphs 4.33 and 4.34.



## Application fee

- 3.16 The application must be accompanied by the application fee. Application fees are reviewed by Ofcom annually, and applicants should consult the Ofcom website for the most up-to-date fees. Our tariff tables are published no later than 31 March each year<sup>17</sup>. The current application fee is £2,500 per application. This payment is non-refundable.
- 3.17 The application fee can be paid by BACS transfer or cheque.
- 3.18 **Paying by BACS transfer:** application fees can be paid directly by BACS transfer. Confirmation of payment should be emailed to [broadcast.licensing@ofcom.org.uk](mailto:broadcast.licensing@ofcom.org.uk) and a printed copy should be included with your application. Payment details for paying via BACS transfer can be found below.

Lloyds Bank  
69-73 Borough High Street, London, SE1 ING

Account Name: Office of Communications  
Account Number: 00782415  
Sort Code: 30 97 90

BIC: LOYDGB21351  
IBAN: GB05 LOYD 3097 9000 7824 15  
SWIFT: LOYD GB 2L

Remittances: [ofcom.remittances@ofcom.org.uk](mailto:ofcom.remittances@ofcom.org.uk)

Telephone: 020 7783 4930

- 3.19 **Paying by cheque:** please make the cheque payable to Ofcom.

## Annual licence fee

- 3.20 The licensee must pay an annual fee to Ofcom, as a condition of its licence. The fees are revised annually and published no later than 31 March of each year. The annual fees for editorial services are based on a percentage of 'Relevant Turnover', which in the Television sector relates to any turnover that is derived from advertising/sponsorship, subscriptions and interactive activities<sup>18</sup>. The minimum fee is currently £1,000 for the charging year.
- 3.21 A self-promotional service – which consists of a particular kind of advertising whereby the broadcaster promotes its own products, services or channels – is charged the minimum fee of £1,000 for the charging year.
- 3.22 For teleshopping services, there is a fixed annual fee. The current fixed fee for the charging year is £2,000.

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<sup>17</sup> Available at: <https://www.ofcom.org.uk/about-ofcom/annual-reports-and-plans>

<sup>18</sup> Please refer to Ofcom's Statement of Charging Principals (Annex B, pages 17 to 43) for further details: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/51058/charging\\_principles.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/51058/charging_principles.pdf)

- 3.23 For further information about fees, see Ofcom’s Statement of Charging Principles<sup>19</sup>, and Ofcom’s Tariff Table<sup>20</sup>.
- 3.24 It is important that licensees pay their annual licence fees on time. If fees are not paid by the date stated in the invoice, Ofcom is likely to investigate whether a breach of the relevant licence condition has occurred and may consider whether to impose a financial penalty and/or to revoke the licence.
- 3.25 If you wish to pay your annual fee by direct debit, please enclose a direct debit form with the application<sup>21</sup>.

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<sup>19</sup> Available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/51058/charging\\_principles.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/51058/charging_principles.pdf)

<sup>20</sup> Available at: <https://www.ofcom.org.uk/about-ofcom/annual-reports-and-plans>

<sup>21</sup> Our direct debit mandate form is available at:  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0012/20136/dd.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0012/20136/dd.pdf)

# Completing your application form

*This section of the guidance notes provides information on the corresponding sections of the TLCS application form, to help you fill in your application form correctly.*

## Applicant's contact details

- 4.1 In this section, you must insert the contact details of the applicant company along with the company number, where applicable. In most cases this will be a limited company, although it could be another type of organisation, or an individual.
- 4.2 Providing correct contact information is important as Ofcom needs to know precisely who to contact at the applicant company for various matters if a licence is granted. See paragraphs 2.32 to 2.35 of our TLCS Guidance notes for licensees<sup>22</sup> for more details on provision of information to Ofcom.
- 4.3 The applicant is asked for contact details for the following contacts:
- **Licence contact:** The Licence Contact is the day-to-day contact for Ofcom on licensing matters. Examples of the type of communication between the Licence Contact and Ofcom could be questions regarding ownership of the licensee company; changes to the licence; and responding to information requests.
  - **Billing/Finance contact:** Contact details for Ofcom regarding invoicing/payment of annual licence fees.
  - **Market Intelligence Data contact:** Contact details for Ofcom regarding submission of 'market intelligence data'. This is information that Ofcom requests from its licensees every year, including information about the service's turnover (used to calculate subsequent licence fees) and any European productions.
  - **Public contact:** Contact details for publication on the Ofcom website and/or in other relevant Ofcom publications. When a licence is granted, the name of the service, contact details for the licensee and a brief description of the licensed service are published on the Ofcom website.
- 4.4 If you are completing the form as an agent, i.e. you are acting on the applicant company or individual's behalf, please refer to paragraph 3.5. If we require further information, our questions will be directed to the applicant, not the agent.

## Jurisdiction of the applicant

- 4.5 The Audiovisual Media Services Directive<sup>23</sup> provides for freedom of retransmission and reception for television services within the European Economic Area. A service which is licensed (or otherwise appropriately authorised) in one Member State does not need separate licensing in any other Member State. Dual licensing is not permitted.

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<sup>22</sup> Available at:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0012/36201/tlcs\\_guidance\\_notes\\_for\\_licensees.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0012/36201/tlcs_guidance_notes_for_licensees.pdf)

<sup>23</sup> The Audiovisual Media Services Directive (Directive 2010/13/EU) is available at:

[http://ec.europa.eu/avpolicy/reg/avms/index\\_en.htm](http://ec.europa.eu/avpolicy/reg/avms/index_en.htm)

- 4.6 Ofcom can only license a service if the provider of that service (“the broadcaster”) falls into the UK’s jurisdiction as determined by the criteria set out in Article 2 of the Audiovisual Media Services Directive. Applicants should also have regard to the European Convention on Transfrontier Broadcasting and its amending Protocol (ETS132 and ETS171).
- 4.7 The criteria set out in Article 2 of the Audiovisual Media Services Directive state that the broadcaster may fall into the UK’s jurisdiction in the following circumstances:
- one of the *primary establishment criteria* applies (e.g. the broadcaster has its head office in the UK and the editorial decisions about the service are taken in the UK); or
  - one of the *subsidiary technical criteria* applies (e.g. the broadcaster uses a satellite uplink situated in the UK). Please note that these criteria are applicable only if none of the primary establishment criteria apply; or
  - the broadcaster is established in the UK in accordance with Articles 49 to 55 of the Treaty establishing the European Community. Please note that this is a *subsidiary establishment criterion* and is only applicable if neither the primary establishment criteria or subsidiary technical criteria are met.
- 4.8 Further details about these criteria are set out below including a flowchart in Figure 1 on page 14 to assist you in determining under which jurisdiction your proposed service falls.

## Primary establishment criteria

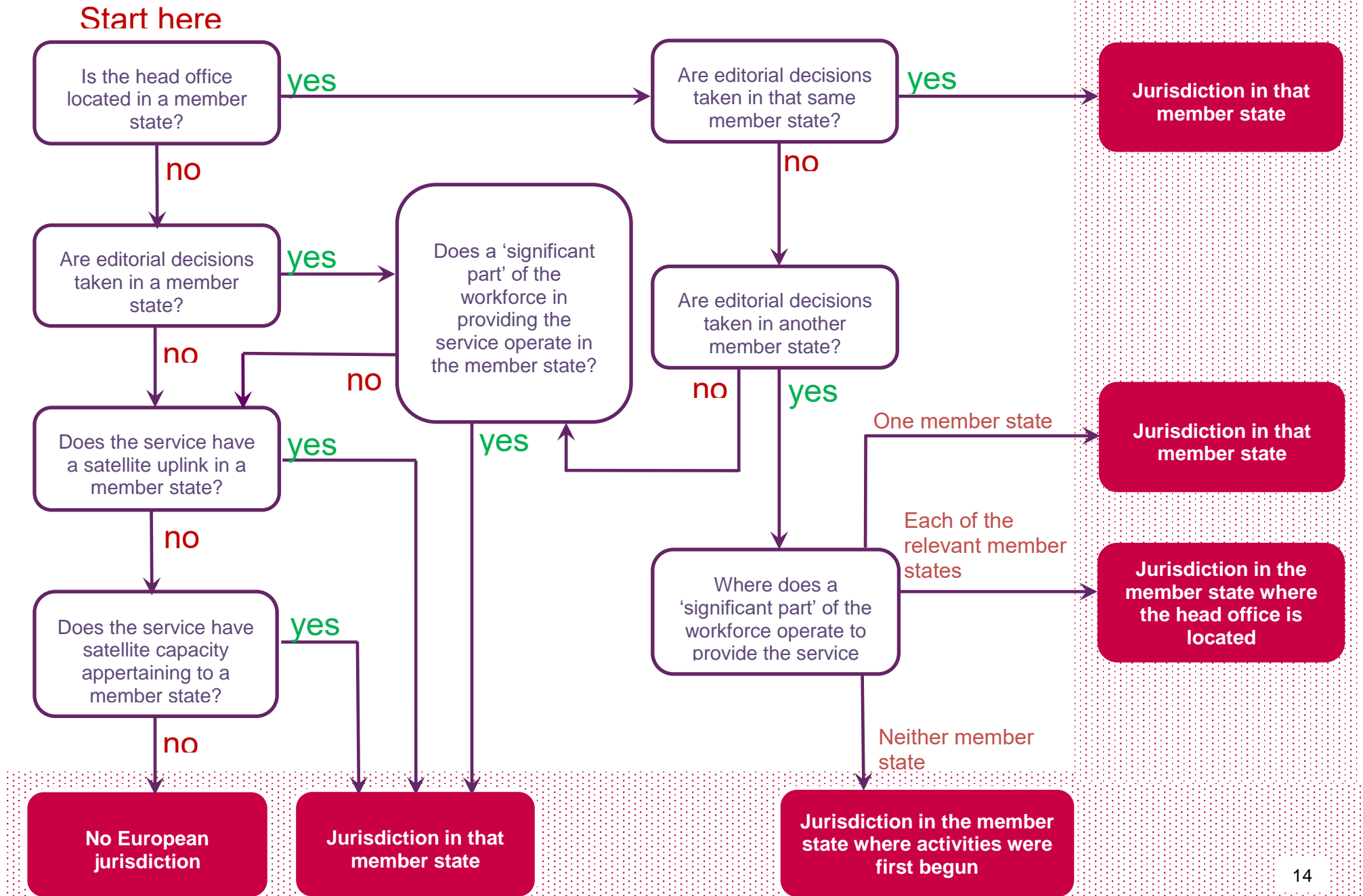
- 4.9 The Audiovisual Media Services Directive states that a broadcaster is established in a Member State (i.e. falls into its jurisdiction) in the following circumstances:
- If a broadcaster has its head office in that Member State and the editorial decisions about programme schedules are taken in that Member State.
  - If a broadcaster has its head office in one Member State but editorial decisions on programme schedules are taken in another Member State, it will be considered to be established in the Member State where a significant part of the workforce operates.
  - If a significant part of the workforce operates in each of those Member States, the broadcaster will be considered to be established in the Member State where it has its head office.
  - If a significant part of the workforce operates in neither the Member State where the editorial decisions about programme schedules are taken, nor the Member State where the applicant has its head office, the broadcaster will be considered to be established in the Member State where it first began broadcasting lawfully, provided that it maintains a stable and effective link with the economy of that Member State.
  - If a broadcaster has its head office in a Member State but decisions on programme schedules are taken in a third country, or vice-versa, it will be considered to be established in the Member State concerned, provided that a significant part of the workforce operates in that Member State.

## Subsidiary technical criteria

- 4.10 If the primary establishment criteria do not apply, broadcasters may still fall into the jurisdiction of a Member State in the following circumstances:
- If a broadcaster uses a **satellite uplink** situated in that Member State. If the service is uplinked from more than one Member State, the broadcaster will fall under the jurisdiction of the Member State where the first established uplink is located. However, if the oldest uplink relates to a satellite without a footprint focused on Europe, while the more recent one relates to a satellite which does, the more recent one will be taken into consideration when determining the jurisdiction.
  - If a broadcaster does not use a satellite uplink situated in that Member State, but does use **satellite capacity** relating to that Member State. This subsidiary criterion will apply if jurisdiction of any Member State cannot be established under the “satellite uplink” criterion referred to above.
- 4.11 If neither the primary or subsidiary technical criteria enable the jurisdiction of a particular service to be determined, the relevant Member State will be where the broadcaster is established within the meaning of Articles 49 to 55 of the Treaty establishing the European Community.
- 4.12 Broadcasts intended exclusively for reception in countries that are not signatories of the Audiovisual Media Services Directive and which are not received directly or indirectly by the public in one or more Member States are not normally licensable by Ofcom.

Figure 1: A flowchart to determine under which jurisdiction your proposed service falls

## AVMS Member State Jurisdiction



## Details of applicant's directors, partners or governing members of the applicant and details of applicant's shareholders, members and participants

### Ownership restrictions

- 4.13 The Broadcasting Act 1990<sup>24</sup> lays down a number of restrictions on who may hold Ofcom's broadcasting licences. The following are among those who are disqualified from holding a TLCS licence or from controlling a licensed company<sup>25</sup>:
- a local authority<sup>26</sup>;
  - a political body;
  - a religious body, other than where Ofcom is satisfied that it is appropriate for a particular person to hold a licence and makes a determination to that effect. If you wish to seek such a determination, please consult the Ofcom Guidance for religious bodies applying for a Broadcasting Act licence<sup>27</sup>;
  - any company controlled by any of the above or by their officers or associates;
  - an advertising agency or any company controlled by such an agency or in which it holds more than a 5 per cent interest<sup>28</sup>.
- 4.14 Please note that in accordance with the Broadcasting Act 1990 (as amended) Ofcom has the power to determine that in certain circumstances a person with less than a 50 per cent share can be deemed to control a company.
- 4.15 If information is relevant to determining whether an applicant is a disqualified person, it is an offence for the applicant to supply false information or to withhold information with the intention of misleading Ofcom. If a person is convicted in such cases, the court may make an order disqualifying the applicant from holding a licence for a specified period. A disqualification order applies to both the individual concerned and to any company of which he or she is a director or involved in the management of (whether directly or indirectly).

### Eligibility requirements

- 4.16 Ofcom is required by law to consider whether a person is "fit and proper"<sup>29</sup> to hold a licence. This is done on a case-by-case basis. In determining whether a person

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<sup>24</sup> As amended by the Broadcasting Act 1996 and the Communications Act 2003.

<sup>25</sup> In accordance with the Broadcasting Act 1990 (as amended).

<sup>26</sup> Except where the service is provided exclusively for the purposes of carrying out the functions of a local authority under Section 142 of the Local Government Act 1972 (as amended) provision by local authorities of information relating to their activities.

<sup>27</sup> Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0028/88219/Guidance-for-religious-bodies.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0028/88219/Guidance-for-religious-bodies.pdf)

<sup>28</sup> According to the Broadcasting Act 1990 (as amended), an "advertising agency" means an individual or body corporate who carries on business as an advertising agent involved in the selection and purchase or advertising time or space for the person who wishes to advertise (section 202 (7) of the 1990 Act).

<sup>29</sup> Under section 3 of the Broadcasting Acts 1990 and 1996.

is “fit and proper”, a number of issues will be considered which could include, but is not limited to:

- criminal convictions;
- bankruptcy and insolvency;
- disqualified directions;
- removal from a professional or trade body;
- general statutory disqualifications; and
- previous broadcasting compliance history (e.g. licence applications, sanctions).

## The proposed service

### Name of the licensed service

- 4.17 The applicant chooses the name for their proposed service. It is the responsibility of the applicant to ensure the name can be used<sup>30</sup>. Ofcom considers the proposed name of a service in an application to the extent that it may be relevant to the licensing criteria. This could concern, for example, matters relating to the Ofcom Broadcasting Code, such as the use of explicit language that viewers may find offensive.
- 4.18 It is the responsibility of the applicant to enter into agreements with the appropriate copyright licensing bodies before commencing broadcasting. The granting of a licence does not constitute a right to use a particular name.

### Methods of delivery

- 4.19 A TLCS licence is valid for any mode of delivery with the exception of DTT (Freeview). You should indicate if the service will be delivered via cable, satellite, internet, mobile phone or other technology.

### Free-to-air, subscription-based, pay-per-view

- 4.20 A free-to-air service means that a viewer would be able to receive this (with the correct equipment) without any further subscription or payment. Free-to-air also refers to channels and broadcasters providing content for which no subscription is expected, even though they may be delivered to the viewer by another carrier for which a subscription is required.
- 4.21 A subscription-based service is encrypted or has another technology in place to prevent a viewer from receiving the service unless the viewer has paid for a regular subscription to receive the service.

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<sup>30</sup> Ofcom’s statutory remit does not extend to intellectual property matters, and it is for you to satisfy yourself that the proposed name of the service will not cause problems, from your own point of view, with (for example) a similar name for an existing service.



- 4.22 A pay-per-view service is purchased by a viewer on a one-off basis to view a broadcast.

### Technical standards

- 4.23 If the proposed licensed service will be delivered by satellite, the applicant must ensure that it uses a transmission system complying with the relevant technical standards adopted by a European standards organisation (for example the DVB<sup>31</sup>, which are published by ETSI<sup>32</sup>). More details of European technical standardisation requirements are contained in Article 17 of Council Directive 2002/21EC on the use of standards for the transmission of television signals<sup>33</sup>.

### Notification of agreement with radio multiplex licensee

- 4.24 If a TLCS applicant/licensee makes an arrangement with a radio multiplex licensee to carry the television service on the multiplex, the TLCS licensee must notify Ofcom. The notification can be in the form of a letter, but must contain:
- the identity of the multiplex operator and multiplex service;
  - the days and times of broadcasting; and
  - the amount of digital capacity used.
- 4.25 We also require a letter from the multiplex operator confirming the arrangement. Ofcom must be informed of changes to or termination of an agreement with a radio multiplex operator.

## Nature of the service

### Description of the licensed service (the Annex to the licence)

- 4.26 A licence is issued in respect of a specific, named service and authorises the provision of that service only. The licensed service is described in the Annex, which forms part of the licence.

### Editorial, teleshopping or self-promotional

- 4.27 There is only one type of TLCS licence. Each TLCS licence contains the same conditions which apply to the licensee throughout the licence period<sup>34</sup>. Further information about some of the conditions with which licensees are required to comply is set out in our TLCS Guidance notes for licensees<sup>35</sup>.

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<sup>31</sup> [www.dvb.org](http://www.dvb.org)

<sup>32</sup> [www.etsi.org](http://www.etsi.org)

<sup>33</sup> Available at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32002L0021&from=en>

<sup>34</sup> Available at:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0012/36201/tlcs\\_guidance\\_notes\\_for\\_licensees.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0012/36201/tlcs_guidance_notes_for_licensees.pdf)

<sup>35</sup> Available at:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0012/36201/tlcs\\_guidance\\_notes\\_for\\_licensees.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0012/36201/tlcs_guidance_notes_for_licensees.pdf)

- 4.28 Ofcom recognises three types of service which can be provided under a TLCS licence:
- editorial;
  - teleshopping; and
  - self-promotional.
- 4.29 You must state, when applying for a TLCS licence, what type of service you intend to provide.
- 4.30 You are advised to carefully consider the rules in the Code on the Scheduling of Television Advertising (“COSTA”)<sup>36</sup>, as the type of service you choose to provide will affect how they apply to you, as well as what fee category applies to you.
- i) An **editorial service** is a “normal” programme service, with conventional programme material and scheduled advertising breaks. The majority of television channels (including electronic programme guides) fall within this category<sup>37</sup>.
  - ii) A **teleshopping service** is a service which consists of teleshopping. Teleshopping (also known as home shopping, advertorials, infomercials, etc.) is a particular form of advertising which includes the broadcast of direct offers to the public of the supply of goods or services in return for payment. Spot advertising is permitted on teleshopping services up to the same limits as for editorial services. Teleshopping services may not broadcast material (other than permitted spot advertising) which does not contain direct offers to the public. A teleshopping service may therefore not contain any conventional programme elements such as news, sport, films, documentaries or drama, etc.<sup>38</sup>
  - iii) A **self-promotional service** consists of self-promotional material. This is a particular kind of advertising in which the broadcaster promotes its own products, services or channels. Spot advertising and teleshopping windows<sup>39</sup> for other products and services are permitted on self-promotional services up to the same limits as for editorial services. Self-promotional services may not broadcast material (other than permitted advertising and teleshopping) which does not promote the broadcaster's own goods or services. A self-promotional service may not therefore contain any conventional programme elements such as news, sport, films, documentaries or drama, etc.<sup>40</sup>
- 4.31 Transactional gambling services<sup>41</sup> will be treated as providing a teleshopping service rather than editorial output and licensed accordingly. The same will apply to ‘windows’ of transactional gambling within an otherwise editorial service. Licensees should continue to be able to choose what output they wish to provide:

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<sup>36</sup> Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0014/32162/costa-april-2016.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0014/32162/costa-april-2016.pdf)

<sup>37</sup> Editorial services are category B licences for the purposes of Ofcom’s Statement of Charging Principles.

<sup>38</sup> Teleshopping services are category E licences for the purposes of Ofcom’s Statement of Charging Principles.

<sup>39</sup> Teleshopping windows must be at least 15 minutes in duration.

<sup>40</sup> Self-promotional services are category B licences for the purposes of Ofcom’s Statement of Charging Principles.

<sup>41</sup> Typically, transactional TV gambling output offers roulette, card games and virtual horse and dog racing.

specifically, whether they wish to provide a purely editorial gambling-themed service, rather than a teleshopping service, and be licensed accordingly. However, to qualify as editorial, any such services should provide genuine programming and not include transactional gambling in which offers are made, express or implied, to viewers to participate in the services on screen.

- 4.32 If a service offers transactional gambling; the licence will not authorise the provision of transactional gambling content in the UK outside Great Britain where such content remains prohibited<sup>42</sup>.
- 4.33 Interactive television services using premium rate telephone lines or text messages, for example adult chat, adult sex chat and psychic programming are categorised as teleshopping. The UK Code of Broadcast Advertising (“the BCAP Code”) requires that these types of services are specifically licensed for the purpose<sup>43</sup>. If you intend to include this programming as part of your proposed service, the annex to your licence will include a reference to the provision of such programming. If this is not detailed in the Annex of the licence, you will not be authorised to provide this type of programming.

## Broadcast content

- 4.34 The applicant must ensure that all content to be included in the proposed licensed service will be able to comply with the relevant codes including, but not limited to:
- the Ofcom Broadcasting Code (incorporating the Cross-promotion Code), which covers standards in programmes, sponsorship, product placement and fairness and privacy<sup>44</sup>;
  - COSTA, which sets limits on the amount of advertising that can be transmitted (e.g. no more than 12 minutes per hour) and when advertising can be scheduled; and
  - the BCAP Code<sup>45</sup>, which covers standards for the content of broadcast advertising.
- 4.35 You should refer to Ofcom’s compliance checklist for TV broadcast content for further details of the codes and rules you should consider<sup>46</sup>.

## Compliance

- 4.36 The applicant must be able to adopt procedures that are acceptable to Ofcom for ensuring that the proposed licensed service will comply with the requirements of

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<sup>42</sup> For further information see:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/15934/gambling.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/15934/gambling.pdf)

<sup>43</sup> Please refer to Rule 23.3.2 of the BCAP Code in relation to telecommunications based sexual entertainment services and Rule 15.5.2 of the BCAP Code rule in relation to services relying on belief systems such as astrology, tarot or other psychic services. See: <http://www.cap.org.uk/Advertising-Codes/~media/Files/CAP/Codes%20BCAP%20pdf/The%20BCAP%20Code.ashx>

<sup>44</sup> The Broadcasting Code and the associated guidance can be found at: <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>

<sup>45</sup> Available at: <http://www.cap.org.uk/Advertising-Codes/~media/Files/CAP/Codes%20BCAP%20pdf/The%20BCAP%20Code.ashx>

<sup>46</sup> Available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0031/35779/compliance\\_checklist\\_for\\_tv\\_broadcasters.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0031/35779/compliance_checklist_for_tv_broadcasters.pdf)

the licence, including complying with any direction issued by Ofcom. Such procedures may include:

- ensuring that there are sufficient staff, and that staff are of sufficient seniority. All staff should fully understand the licence requirements (including compliance with relevant codes and rules) and the programme and advertising standards that apply to the service; and
- making arrangements for the adequate clearance of advertising.

4.37 Applicants should be aware that licensees must supply details of their compliance procedures to Ofcom, if we request them.

4.38 Before you apply for a licence it is important that you read our Compliance checklist for TV broadcast content<sup>47</sup>. The checklist is intended to help applicants and new licensees understand the obligations and rules with which they must comply as a condition of their Ofcom licence to broadcast. Prospective licensees must be aware of the potential scope of their regulatory responsibilities so that robust compliance procedures can be planned and financed at an early stage.

## European production quotas

4.39 The Audiovisual Media Services Directive requires that European productions should account for over 50% of the transmission hours (subject to certain exclusions) and European independent productions must account for at least 10% of transmission hours. Of these, an 'adequate proportion' must be programmes transmitted within five years of production.

4.40 The following are exempt from the requirements for European productions:

- services broadcasting programming entirely or substantially in a non-European Union language;
- services which serve a local or regional audience, and do not form part of a national network; or
- services which only broadcast news or sports event programming, games, teletext services or teleshopping.

4.41 For further information, please refer to the Ofcom Guidance on European production quotas<sup>48</sup>.

## Application form checklist

4.42 The application form must be accompanied by the supporting documentation. The application will not be processed until all the supporting documentation listed below has been received:

- A copy of the Memorandum and Articles of Association (or, if a body corporate without such, the nearest equivalent along with a translation, if it is not in English), together with copies of any resolution amending or updating them.

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<sup>47</sup> See footnote 48.

<sup>48</sup> Available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0018/12942/av-media-services.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0018/12942/av-media-services.pdf)

- A copy of the last Annual Return (or if the entity is recently established such that it has not yet been required to make that return, a copy of all filing made to Companies House since incorporation).
- The most recent accounts of the applicant (not applicable to recently established entities).
- An organisational chart showing the ownership structure of the applicant company, including percentages for shares held in it and for shares held by it in other companies to which it is connected.
- A copy of the contract between the applicant and the satellite uplink provider or the satellite provider (as applicable).
- An indicative schedule of the content of the proposed service.
- A diagram detailing the applicant's proposed compliance structure.
- A copy of gambling licence/permit (if applicable).
- If you are an agent, a letter authorising you to act on the applicant's behalf.
- The application fee of £2,500 payable by cheque made out to 'Ofcom' or BACS (if paying the application fee by BACS please submit a copy of the BACS remittance with your application).

## Confidentiality requests

### Publication of information about applications and licensed services

- 4.43 Please complete question 10.1 of the application form telling us if you consider any of the information you have provided is confidential. If an applicant asks us to keep part or all of an application confidential, we will treat this request seriously and will try to respect this. However, sometimes we will need to publish such applications, including those that are marked as confidential, in order to meet legal obligations, for example under the Freedom of Information Act 2000.
- 4.44 Ofcom is a Data Controller under the Data Protection Act 1998 and is committed to protecting and processing any personal information shared with us in a manner which meets the requirements of the Data Protection Act 1998 as outlined in the statement on our website at <https://www.ofcom.org.uk/about-ofcom/foi-dp/data-protection>.
- 4.45 When a licence is granted, the name of the service, contact details for the licensee and a brief description of the licensed service are published on the Ofcom website. These are the details supplied in the application form. If you have any questions about the information that we publish, or there are any changes to this information, you should contact the Television Broadcast Licensing team by email ([broadcast.licensing@ofcom.org.uk](mailto:broadcast.licensing@ofcom.org.uk)) or telephone (020 7981 4056)
- 4.46 Additionally, Ofcom considers issued TLCS licences to be public documents and will make copies of licences available to third parties on request.
- 4.47 Ofcom also publishes a monthly update which lists new services licensed, licences revoked, licence transfers, and changes to the name or nature of the licensed

service during the past month. The licensing updates are available on our website<sup>49</sup>.

## Data Protection

- 4.48 We require the information requested in the application form in order to carry out our licensing duties under the Broadcasting Act 1990, Broadcasting Act 1996 and Communications Act 2003. Please see Ofcom's General Privacy Statement [www.ofcom.org.uk/about-ofcom/foi-dp/general-privacy-statement](http://www.ofcom.org.uk/about-ofcom/foi-dp/general-privacy-statement) for further information about how Ofcom handles your personal information and your corresponding rights.

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<sup>49</sup> Available at: <https://www.ofcom.org.uk/manage-your-licence/tv-broadcast-licences/updates>

# Frequently asked questions

**Q. How much does a licence cost?**

A. The current application fee is £2,500 per application. This payment is non-refundable. Please see paragraphs 3.16 to 3.19 for further details. Once a licence has been issued, you will be required to pay an annual licence fee. The fees for editorial services are based on a percentage of 'Relevant Turnover', which in the television sector relates to any turnover that is derived from advertising/sponsorship, subscriptions and interactive activities<sup>50</sup>; the minimum fee is currently £1,000 for the charging year. Self-promotional channels are charged the minimum fee. For teleshopping services, there is a fixed annual fee. The current fixed fee for the charging year has been set at £2,000. For further information on annual licence fees, please see paragraphs 3.20 to 3.25.

**Q. How long does the licensing process take?**

A. As a guideline, we aim to issue a licence within 25 working days. However, this cannot be guaranteed. For further information, please see paragraphs 3.9 to 3.15.

**Q. I already have a licence – is there a fast-track application process?**

A. No, there is no fast-track application process. Ofcom licensees must follow the same process as all other applicants.

**Q. Do I need a compliance officer?**

A. Yes, Ofcom must be satisfied that the applicant will have appropriate procedures in place for ensuring that the proposed licensed service will comply with the requirements of the licence. Please see paragraphs 4.35 to 4.37.

**Q. Can I provide a service without a TLCS licence?**

A. If your service meets the definition of a Television Licensable Content Service as set out in paragraphs 2.1 to 2.6 above, you must have a TLCS licence to broadcast.

If your service does not meet the definition of a Television Licensable Content Service you must check whether it meets the definition of the other licence types set out in paragraph 2.3. It is a criminal offence to provide a licensable service without the appropriate licence.

**Q. Can I have an invoice for my TLCS application?**

A. Invoices for applications are not generally issued by Ofcom but you may request one once the application has been submitted.

You may also wish to read the TLCS Guidance notes for licensees:

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0012/36201/tlcs\\_guidance\\_notes\\_for\\_licensees.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0012/36201/tlcs_guidance_notes_for_licensees.pdf) which provides information about the licensing requirements and the conditions that licensees are subject to.

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<sup>50</sup> Please refer to Ofcom's Statement of Charging Principles (Annex B, pages 17 to 43) for further details: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0019/51058/charging\\_principles.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0019/51058/charging_principles.pdf)