

Consultation on proposed changes to broadcast licence conditions

Consultation on proposed changes to the conditions included in television, radio and multiplex licences granted by Ofcom under the Broadcasting Acts 1990 and 1996

[Consultation on proposed changes to broadcast licence conditions](#) – Welsh overview

CONSULTATION:

Publication Date: 10 September 2020

Closing Date for Responses: 8 October 2020

Contents

Section

1. Overview	1
2. Changes resulting from the revised Audiovisual Media Services Directive	5
3. Changes resulting from the Broadcasting (Amendment) (EU Exit) Regulations 2019	9
4. Other changes that we're proposing to make	18

Annex

A1. Licence condition names and numbers	27
A2. Responding to this consultation	30
A3. Ofcom's consultation principles	32
A4. Consultation coversheet	33
A5. Consultation questions	34

1. Overview

This document sets out changes that Ofcom proposes to make to the conditions included in television, radio and multiplex broadcast licences issued under the Broadcasting Acts 1990 and 1996 and provides licensees with an opportunity to make representations on them.

As part of these changes we are proposing two amendments to television broadcasting licences to reflect the new requirements of the revised Audiovisual Media Services Directive¹ (“AVMSD”) and the UK Government’s proposed implementation of it. The UK is required to implement the revised AVMSD, and after the end of the transition period for the UK’s withdrawal from the European Union (“EU”), this will be ‘retained’ EU law. Our proposals for television licences also reflect legislation which will take effect following the end of the transition period. Finally, we are consulting on some other changes to all broadcast licences.

Throughout this consultation, we mainly refer to licence conditions by their name, instead of by their number. This is because the licence condition numbers are often different in the different types of broadcasting licences. We have included a list of the licence condition names we mention in this consultation and the corresponding existing licence condition number for each type of licence in Annex One.

¹ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.

What we are proposing – in brief

Changes resulting from the revised AVMSD (television licences only)

- The addition of a new licence condition in television licensable content service (“TLCS”), digital television programme service (“DTPS”), public service digital television programme service (“PS-DTPS”), local digital television programme service (“L-DTPS”), digital replacement service (“DRS”) restricted television services for an event (“RTSL-E”) and digital television additional service (“DTAS”) licences requiring licensees to notify Ofcom of any changes affecting the determination of jurisdiction of the licensed service; and
- Amendments to the existing “provision of [service type] service by the Licensee” condition in TLCS, DTPS, PS-DTPS, L-DTPS, DRS, RTSL-E and DTAS licences adding a requirement for licensees to publish, or to provide recipients of the service with, confirmation that the service falls under the UK’s jurisdiction and the name of any EU or European Economic Area (“EEA”) country whose jurisdiction the service falls under. Also, to reflect in the condition in PS-DTPS and DRS licences the existing requirement for licensees to publish or to provide recipients of the service with the licensee’s name, address and electronic address.

Changes resulting from the Broadcasting (Amendment) (EU Exit) Regulations 2019 (the “Exit Regulations”) (television licences only)

- The addition of a new licence condition applicable only to electronic programming guide (“EPG”) providers requiring them to ensure any service listed or promoted by, or which can be accessed through, their platform/guide is appropriately licensed;
- The addition of new licence conditions requiring licensees to provide information to users on capital composition and how services are financed;
- The addition of licence conditions that set out when the European Convention on Transfrontier Television (“ECTT”) content rules will apply;
- Changes to jurisdiction criteria resulting from the change from a regulatory regime based on the AVMSD to the one established by the Exit Regulations; and
- The addition of new definitions, as needed, at Condition 1 of the TLCS, DTPS, PS-DTPS, L-DTPS, DRS, RTSL-E and DTAS licences. These will include:
 - i) a definition of the “ECTT”;
 - ii) a definition of an “ECTT Party”; and
 - iii) a definition of a “Regulated EPG”.

Other changes we're proposing to make (all service licences, including those we may license in future²)

- An amendment to the wording of the “force majeure” condition in all TLCS, DTPS, PS-DTPS, L-DTPS, DRS, RTSL-E, DTAS, analogue sound broadcasting service (“ASPS”),³ community radio service (“CR”), digital sound programme service (“DSPS”),⁴ analogue additional radio service (“AS”), digital additional service (“DAS”), radio licensable content service (“RLCS”), long-term restricted service licence (“LRSL”), short-term restricted service licence (“SRSL”), audio distribution systems restricted service licence (“ADS-RSL”), radio multiplex (“R-MUX”) and digital terrestrial television multiplex (“DTT-MUX”) licences. The amendment makes clear that the “force majeure” is only engaged in situations where a breach of the licence has occurred due to circumstances beyond the licensee’s control;
- An amendment to the “retention and production of recordings” condition in all TLCS, DTPS, PS-DTPS, L-DTPS, DRS, RTSL-E, DTAS, ASPS, CR, DSPS, AS, DAS, RLCS, LRSL, SRSL and ADS-RSL licences. The amendment will ensure the condition applies regardless of whether Ofcom has received a standards complaint, to make sure recordings are retained in broadcast quality, and is fit for purpose in cases where the licensee is an EPG provider;
- An amendment to the “general provision of information to Ofcom” condition in all TLCS, DTPS, PS-DTPS, L-DTPS, DRS, RTSL-E, DTAS, ASPS, CR, DSPS, AS, DAS, RLCS, LRSL, SRSL, ADS-RSL, R-MUX and DTT-MUX licences. The amendment will move the existing parts of the “general provision of information to Ofcom” condition which set out situations or events that licensees are required to notify us of to a new “notifications to Ofcom” condition;
- A new “notifications to Ofcom” condition to be included in all TLCS, DTPS, PS-DTPS, L-DTPS, DRS, RTSL-E, DTAS, ASPS, CR, DSPS, AS, DAS, RLCS, LRSL, SRSL, ADS-RSL, R-MUX and DTT-MUX licences. The condition will capture the existing requirements for licensees to notify Ofcom of a change of control, with amendments to the wording of the current condition to make sure it applies in all cases;
- Additional wording to the licence condition “revocation” in all ASPS, CR, DSPS, AS, DAS, RLCS, LRSL, SRSL and ADS-RSL licences to reflect Ofcom’s power to suspend these licence types when imposing a sanction;
- Removal of the “interest on late payments” condition from all TLCS, DTPS, PS-DTPS, L-DTPS, DRS, RTSL-E, DTAS, ASPS, CR, DSPS, AS, DAS, RLCS, LRSL, SRSL, ADS-RSL, R-MUX and DTT-MUX licences.; and
- Changing the wording of all broadcast licences to make the wording gender neutral.

² For example, community digital sound programme licences and small-scale radio multiplex licences.

³ Both national (“AN”) and local (“AL”)

⁴ Both national (“DN”) and local (“DP”)

Next steps

- 1.1 We invite comments and representations on the proposed changes by 5pm on Thursday 8 October 2020. Subject to consideration of responses, we intend to make the proposed changes shortly after to come into effect as follows:
- AVMSD changes: to have effect immediately;
 - Exit Regulations changes: to have effect from the end of the transition period;
 - Other changes: to have effect immediately.
- 1.2 For existing licensees, this will involve Ofcom serving a notice of the change to your licences on you. For new licensees, the changes will take place to the templates on our website and new licensees will be issued with these new licence templates if they are successful in applying for a licence.

The overview section in this document is a simplified high-level summary only. The proposals we are consulting on and our reasoning are set out in the full document.

2. Changes resulting from the revised Audiovisual Media Services Directive

Background

- 2.1 Under section 4(1)(a) of the Broadcasting Act 1990 (the “1990 Act”), Ofcom has a duty to include, in each licence granted under that part of the Act, conditions that it thinks are appropriate to enable it to carry out its duties (and any duties imposed on licence holders) under the 1990 Act, the Broadcasting Act 1996 (the “1996 Act”) or the Communications Act 2003.
- 2.2 Under Section 211 the Communications Act 2003, Ofcom has a duty to regulate television broadcast services and video on demand services that are under the jurisdiction of the UK for the purposes of the AVMSD. The AVMSD governs the coordination of EU-wide national legislation on audiovisual media services, including television and video-on-demand services.
- 2.3 On 6 November 2018 the EU [completed a review of the Audiovisual Media Services Directive](#) (“AVMSD”). [The revised AVMSD](#) introduces a number of changes, including amendments to existing requirements and a new framework for regulating Video Sharing Platforms.
- 2.4 The revised AVMSD is required to be implemented by EU Member States by 19 September 2020. Under the terms of [the Withdrawal Agreement](#), the UK Government has committed to implementing EU legislation up to the end of the Brexit transition period on 31 December 2020. The UK Government consulted on [its proposed approach to implementing the revised Directive](#) in 2019 (it consulted separately [on the requirements for Video Sharing Platforms](#)), and on 24 July 2019 the Secretary of State for Digital, Culture, Media and Sport [published a written statement](#) setting out how the UK Government intended to proceed with implementation. The UK Government expects to implement the revised AVMSD in Autumn 2020.
- 2.5 A draft of the Regulations to be used to implement the revised Directive was [notified to the European Commission](#) on 15 June 2020. The final regulations (“the AVMS Regulations”), will amend the 1990 Act, the 1996 Act and the Communications Act 2003 and will be retained in UK law following the end of the Brexit transition period.
- 2.6 Under the draft of the AVMS Regulations notified to the Commission, Ofcom will be required to establish and maintain an up-to-date list of TLCS, DTPS, PS-DTPS, L-DTPS, RTSL-E and DTAS services and set out how each service falls into the UK’s jurisdiction to license.

- 2.7 Ofcom will also be required to include conditions in the licences for these services to make sure licensees notify us of any changes that might affect the determination of a service's jurisdiction.
- 2.8 In accordance with Article 5(1) of the AVMSD, TLCS, DTPS, L-DTPS, RTSL-E and DTAS licences already require broadcasters to provide their contact details, Ofcom's contact details and those of any relevant co-regulator. However, these requirements are not currently reflected in the licences for PS-DTPS or DRS services. The revised AVMSD also adds a requirement that information concerning the Member State having jurisdiction over the service is made "easily, directly and permanently accessible to the recipients of a service".
- 2.9 We are proposing to amend the current licence condition in TLCS, DTPS, L-DTPS, RTSL-E and DTAS licences to reflect the new requirement of the revised AVMSD. We also propose to reflect the new and previously existing requirements of Article 5(1) in PS-DTPS and DRS licences.
- 2.10 Under section 3(4)(b) of the 1990 Act, Ofcom can change the conditions of licences, and include new conditions, by varying them, provided licensees have been given a reasonable opportunity to make representations about the proposed changes. This consultation gives licensees the opportunity to do so.

Changes that we're proposing

Addition of a new licence condition

- 2.11 Ofcom proposes to include a new condition in the licences for TLCS, DTPS, PS-DTPS, L-DTPS, DRS, RTSL-E and DTAS services which will require licensees to notify us of any changes that might affect the determination of a licensed service's jurisdiction.
- 2.12 We are proposing to include this requirement in the new "notifications to Ofcom" condition, full details of which we set out below in Section Four of this consultation.
- 2.13 The proposed wording of the new condition is:
- "The Licensee shall notify Ofcom of any change that may affect the criteria under which the Licensed Service falls under the jurisdiction of the UK as soon as reasonably practicable".*
- 2.14 We recognise that there is currently a requirement in the "general provision of information to Ofcom" condition of DTPS, PS-DTPS, L-DTPS and DTAS licences to supply Ofcom of details of any change of a licensee's country of establishment. However, the requirement to notify Ofcom of any changes that might affected the determination of a licensed service's jurisdiction is broader than the existing condition in DTPS, PS-DTPS, L-DTPS and

DTAS licences; requiring licensees to provide more information to Ofcom than just details of any change of the licensee's country of establishment.

- 2.15 We are therefore proposing to remove the existing requirement in the "general provision of information to Ofcom" condition from DTPS, PS-DTPS, L-DTPS and DTAS licences, to be replaced with the requirement in the new "notifications to Ofcom" condition as set out above.

Amendments to existing licence conditions

- 2.16 We propose adding to the existing requirements set out in the "provision of [service type] service by the Licensee" condition within TLCS, DTPS, L-DTPS, RTSL-E and DTAS licences, to include the new requirement for service providers to publish, or to provide recipients of the service with, the name of the country or countries whose jurisdiction the service falls under.
- 2.17 We also propose to reflect in the current "provision of [service type] service by the Licensee" condition within PS-DTPS and DRS licences the requirement on service providers to publish, or provide recipients of the service with the licensee's name, address, electronic address, the name of Ofcom as well as any relevant co-regulator and the name of the country or countries whose jurisdiction the service falls under.
- 2.18 The proposed amendments to the "provision of [service type] service by the Licensee" condition in TLCS, DTPS, L-DTPS, RTSL-E and DTAS licences are set out below, with our proposed additions **in bold** and the text we propose to remove ~~struck through~~:

*"In providing the Licensed Service, the Licensee shall **publish or provide recipients of the service with,** ~~supply~~ the following information upon request:*

- (a) the name of the Licensee;*
- (b) the address of the Licensee;*
- (c) the Licensee's electronic address;*
- (d) confirmation that the service falls under the UK's jurisdiction and the name of any EU or EEA country whose jurisdiction the service falls under;***
- (e) the **name,** address and electronic address of Ofcom as well as the name, address and electronic address of any appropriate co-regulator of Ofcom for any purpose in relation to the Licensee or the Licensed Service, as appropriate".*

- 2.19 The proposed additions to the "provision of [service type] service by the Licensee" condition in PS-DTPS and DRS licences are set out below:

*"In providing the Licensed Service, the Licensee shall **publish or provide recipients of the service with,** the following information upon request:*

- (a) the name of the Licensee;***

- (b) the address of the Licensee;*
- (c) the Licensee's electronic address;*
- (d) confirmation that the service falls under the UK's jurisdiction and the name of any EU or EEA country whose jurisdiction the service falls under;*
- (e) the name, address and electronic address of Ofcom as well as the name, address and electronic address of any appropriate co-regulator of Ofcom for any purpose in relation to the Licensee or the Licensed Service, as appropriate".*

Comments and representations

- 2.20 We are inviting comments and representations on the changes Ofcom proposes to make to the licences for TLCS, DTPS, PS-DTPS, L-DTPS, DRS, RTSL-E and DTAS services, as required under section 3(4)(b) of the 1990 Act.

Question 1: Do you have any comments on Ofcom's proposed changes?

- 2.21 Comments on the proposed changes are invited by 5pm on Thursday 8 October 2020. Subject to consideration of responses, we intend to make the proposed changes shortly after, to come into effect immediately.

3. Changes resulting from the Broadcasting (Amendment) (EU Exit) Regulations 2019

Background and legal framework

- 3.1 This section of the consultation sets out the changes to licences that we propose to make as a result of the Exit Regulations.
- 3.2 The UK Government has already made changes to the law that applies to broadcasting in and to the UK. The changes are made by the Exit Regulations.⁵ Unless changed, the Exit Regulations will come into force on exit day, which is immediately after the end of the transition period. The transition period is expected to end at 11pm on 31 December 2020.
- 3.3 Broadcast regulation in the UK is currently governed by the AVMSD. The AVMSD is based on the ‘Country of Origin’ principle. This enables linear TV service providers to broadcast services across the EU, provided they comply with the rules of the country which has jurisdiction over the service. Jurisdiction is decided by a long list of factors, for example, the location of the service provider’s head office and location of the staff involved in providing the service.
- 3.4 After the transition period, the UK will no longer be party to the AVMSD and will be classed as a ‘third country’ under the AVMSD. This means that any Ofcom licensed linear TV service that is available in an EU Member State may require a licence or authorisation from an EU Member State to continue to broadcast to EU Member State(s) once this period has ended.
- 3.5 As Ofcom’s powers to license and authorise linear TV are based on the AVMSD, Ofcom’s jurisdiction over those services will also change. To make the regulatory system operable outside of AVMSD, the UK Government has made changes to the law that applies to broadcasting in and to the UK as set out in the Exit Regulations.
- 3.6 Under the Exit Regulations, jurisdiction over linear TV services will be based on a number of factors:
- Where a service is based, e.g. where the head office and editorial decisions are made.
 - Where a service is broadcasting to, e.g. to the UK or another country.
 - How a service broadcasts, e.g. through cable, satellite or online.
- 3.7 The amendments to licensing arrangements are two-fold:

⁵ SI 2019/224

- a) UK country of destination licensing: any TV service that appears on a 'regulated UK EPG' needs to be licensed and regulated in the UK. The exceptions to this are TV services from countries party to the ECTT, as well as the Irish services TG4, RTÉ1 and RTÉ2.
- b) European Convention on Transfrontier Television: The ECTT is a Council of Europe treaty that is based on a similar country of origin principle to the AVMSD. Where TV services based in the UK are broadcasting to another ECTT country, they are regulated under the provisions of the ECTT. Where TV services broadcasting to the UK are based in an ECTT country, they will not need a licence from the UK but will be regulated to the standards required by the ECTT by that country.

3.8 In 2019, before the Withdrawal Agreement was entered into between the EU and the UK, and in order to prepare for the implementation of the new arrangements in case no such agreement was entered into, we published proposed new licence templates on our website and wrote to EPG providers. Our proposed modifications detailed below take into account representations received in response to those steps, as further set out below.

Regulated EPG changes – new licence conditions

- 3.9 An EPG is a service that consists of the listing or promotion of programmes or programme services and provides access to them.⁶ EPGs are currently provided in the UK under TLCS and DTAS licences issued by Ofcom.
- 3.10 Under the Exit Regulations, Ofcom has a duty to insert conditions in the broadcast licences of EPG providers in order to require the licensee to secure that the only television programme services that are listed or promoted by, or which can be accessed through, the guide are television programme services that:
- a) are provided by or under a broadcasting licence granted by Ofcom; or
 - b) do not fall, in pursuance of section 211(1) of the Communications Act 2003, to be regulated by Ofcom.
- 3.11 We are now consulting on amending all TLCS and DTAS licences to reflect the requirements of the new regime.

⁶ The applicable definition is in section 310(8) of the Communications Act 2003: "electronic programme guide" means a service which consists of -

- (a) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services the providers of which are or include persons other than the provider of the guide; and
- (b) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide.

- 3.12 Any EPG being provided by a provider that held a TLCS or DTAS licence for it immediately before exit day will automatically become a ‘regulated EPG’ on exit day. The changes we are consulting on in this document will be made to all TLCS or DTAS licences.
- 3.13 The law, and not Ofcom will determine which EPGs are regulated EPGs after exit day. Other EPGs could be regulated in future, if the Secretary of State makes an order determining that they should be.

Responses we’ve already received to the proposed new condition

- 3.14 In February and September 2019, we wrote to existing licensed providers of EPGs, which we expect to become regulated EPGs, to seek their representations on our proposals to insert two new licence conditions - 10(2) (for TLCS licences), and condition 7(2) (DTAS licences) - into their licences.
- 3.15 The proposed new licence condition 10(2) (for TLCS licences), and condition 7(2) (DTAS licences) is:
- “To the extent that the Licensed Service consists in or includes a Regulated EPG, the Licensee shall secure that the only television programme services that are listed or promoted by, or which can be accessed through, the guide are television programme services that:*
- (a) are provided by or under a broadcasting licence granted by Ofcom; or*
(b) do not fall, in pursuance of section 211(1) of the Communications Act, to be regulated by Ofcom.”
- 3.16 We are proposing these licence conditions to require EPG providers to ensure that services listed on ‘regulated EPGs’ will be appropriately licensed when the Exit Regulations come into force.
- 3.17 We received representations from one licensee – set out, with our response, below.

Guidance on compliance with the new licence condition TLCS 10(2)/DTAS 7(2)

- 3.18 The respondent noted that EPG providers do not have control over broadcasters’ licensing arrangements which may change over time and could therefore be unknowingly in breach of the new licence condition TLCS 10(2)/DTAS 7(2). The respondent requested that Ofcom provide guidance on how EPG providers can comply with the new licence condition, and make reference to such guidance in the licence condition.
- 3.19 Ofcom does not intend to publish guidance on this matter. It is for EPG providers to take such steps as they consider appropriate to secure that they comply with the conditions of their licence. When considering whether to take enforcement action under the licence condition against an EPG provider which has allowed an unlicensed/unauthorised service to broadcast on its EPG, we will have regard to our administrative priorities and the facts of

the case. We will take enforcement action where it is appropriate and proportionate to do so.

Grace period

- 3.20 The respondent suggested that Ofcom should provide for a 12-month grace period during which the licence variation would not be enforced. The respondent suggested that this would allow for time for: i) Ofcom to consult and publish guidance on compliance with the new licence condition; ii) enable EPG providers to implement such guidance, including allowing for amendments to contracts if necessary.
- 3.21 Ofcom is required by law to insert this condition in licences and it would not be appropriate for us to circumvent the clear intention of the law by adopting a policy of not enforcing such conditions. As set out above, Ofcom does not intend to publish guidance.
- 3.22 The respondent also sought clarification on the application of section 211 of the Communications Act 2003, and indicated that a grace period should be provided in respect of broadcasters that immediately before exit day were under the jurisdiction of an EEA state other than the UK, and immediately after exit day fall to the jurisdiction of the UK under the ECTT, e.g. due to location of uplink.
- 3.23 As set out in [our published FAQs](#), Ofcom considers that if a person is established in an EU Member State under the AVMSD primary jurisdictional criteria, and that state is not party to the ECTT, the person falls outside the ECTT and so the scenario suggested would not arise in relation to those states.
- 3.24 We also note that in the Exit Regulations, the UK Government has specifically provided a grace period for particular broadcasters. We therefore do not consider a grace period for other broadcasters to be necessary or appropriate.

Online services

- 3.25 The respondent asked for confirmation that online EPGs are not covered by the definition of a 'regulated EPG'.
- 3.26 The Exit Regulations say that EPGs that are being provided under a TLCS or DTAS licence from Ofcom on the day of exit will be regulated EPGs. Precisely which EPGs will be caught is not possible to determine until the day of exit. However, our current understanding is that some EPGs are currently provided via the internet under TLCS licences issued by Ofcom.
- 3.27 The respondent also noted that channels that are available via the internet, but do not appear on a regulated EPG, will no longer require a UK licence. The respondent raised concern that the regulatory framework resulting from the changes made by the Exit Regulations and the proposed new licence conditions will have the overall effect of

lowering the regulatory burden for online services whilst increasing it for traditional broadcast services.

- 3.28 Ofcom does not have the power to resolve this concern as it is the UK Government who is responsible for the changes made by the Exit Regulations.

Comments and representations – regulated EPG licence conditions

- 3.29 We are inviting comments and representations on the changes Ofcom proposes to make to the conditions of TLCS and DTAS broadcast licences, as required under section 3(4)(b) of 1990 Act.

Question 2: Do you have any comments on Ofcom's proposed changes?

- 3.30 Comments on the proposed changes are invited by 5pm on Thursday 8 October 2020. Subject to consideration of responses, we intend to give notice of the proposed changes shortly after, to come into effect at the end of the transition period.

Non-EPG changes – new definitions and licence conditions

- 3.31 To implement the new regulatory framework, Ofcom must also make additions and changes to definitions and licence conditions of TLCS, DTPS, PS-DTPS, L-DTPS, RTSL-E, DRS and DTAS licences. The changes are:
- a) To create new definitions of terms used in the regime: ECTT; ECTT Party; and Regulated EPG;
 - b) To remove references to EU laws that will no longer be appropriate;
 - c) To require broadcasters to provide on request information to users on capital composition and how services are financed, in order for the UK to comply with Article 6(2) of the ECTT;
 - d) As required by the way the Exit Regulations implement the ECTT, to require broadcasters to comply with ECTT content rules, to the extent that they broadcast services:
 - i) receivable in all parts of another ECTT Party using standard consumer equipment; and
 - ii) accessible in that ECTT Party by means of an EPG that is licensed or otherwise regulated under the law of that state, or, if the state does not regulate EPGs, an EPG the provider of which has a head office in that state.

- e) To provide for the “listed events” regime under the ECTT to apply in addition to the listed events regime under the AVMSD, (noting that our understanding is that these are currently substantively the same).
- 3.32 The changes that we are proposing are set out in the template licences available [on the webpage for this consultation](#). New additions are presented in an **alternative colour, underlined and highlighted** and any wording we are proposing to remove is ~~struck through~~. The template licences are not fully accessible, including to those using screen readers. However, we have also published clean versions of the template licences [on the webpage for this consultation](#).
- 3.33 The template licences show all the changes that we are proposing to make in this consultation, not just the changes that we are proposing to make as a result of the Exit Regulations.

Responses we’ve already received to the proposed new conditions

- 3.34 In February 2019, we published on our website the proposed new licence templates to be issued to all new successful TLCS, DTPS and DTAS applicants after exit day. The licences that we published, and the conditions that we refer to in the text below, are available to view here for [TLCS](#), [DTPS](#) and [DTAS](#) licences.
- 3.35 We received comments on them from one licensee – set out, with our response, below.

ECTT Party definition

- 3.36 The respondent suggested amending the definition of ECTT Party from the wording that we had published which said:
- “ECTT Party”** means a state that is party to the European Convention on Transfrontier Television
- because some States have signed but not ratified the ECTT. Ofcom agrees, and the proposed new definition has been changed to make clear that an ECTT Party is a state that has signed and ratified the ECTT. The proposed new definition can be seen in the template licences [on the webpage for this consultation](#).

European Programmes definition

- 3.37 The respondent noted that we had defined the term “European Programmes”, but the term is not used in the amended licences. We agree, and we have therefore deleted it – which can be seen in the struck-through text in the template licences [on the webpage for this consultation](#).

Provision of [service type] service by the Licensee condition

- 3.38 The respondent raised concern about the additional requirements imposed under the additions to this licence condition. The proposed additional requirements are to provide information to users on capital composition and how services are financed.
- 3.39 The respondent noted that this requirement comes from Article 6(2) of the ECTT which states that the requirement to make specified information available falls on “the competent authority of transmitting Party”, i.e. Ofcom, rather than the licensee. The respondent said that Ofcom should already have the additional information requested from licence application forms and that therefore that the proposed additions were not necessary.
- 3.40 Ofcom is proposing to add these additional provisions to the licences because while Ofcom does collect data about capital composition and how services are financed in application forms, this information may change over time and licensees are best placed to provide up-to-date and accurate information if it is requested. We consider this to be the most efficient and practical way to make the specified information available.
- 3.41 The respondent also noted that the wording of the condition in the proposed DTPS licence was not amended to include the wording “upon request” after “the Licensee shall supply the following information” as it was in the TLCS licences. Ofcom agrees, and notes that “upon request” was not included in the DTAS licence either. We have corrected this so the DTPS, PS-DTPS, L-DTPS, RTSL-E and DTAS licences include the wording “upon request” to reflect the wording of the TLCS licence – which can be seen in the template licences [on the webpage for this consultation](#).

ECTT Standards condition

- 3.42 The respondent said that the wording of the new proposed condition on ECTT Standards was unclear.
- 3.43 The respondent suggested (i) clarifying the wording of the condition, for example by providing an example of its application; and (ii) expressly identifying any specific circumstances (if any) that are being carved-out.
- 3.44 The ECTT Standards condition sets out when the ECTT will apply, and reflects the provisions of the Exit Regulations. As such, we do not think it is appropriate to add examples or expressly identify specific circumstances within the text of the licence condition itself.
- 3.45 The respondent also said that any new content rules that would need to be complied with by in scope services under this new condition should be included in the existing Broadcasting Code, rather than in a new code, as suggested in the proposed licences we had published. Such rules should also make clear whether they apply to broadcasters that

make services available in (i) the UK and another ECTT State that is not an EEA State; (ii) the UK and another ECTT State that is an EEA State; or (iii) the UK and an EEA State that is not an ECTT State, or regardless of the States in which the services are made available. The respondent argued that this would enable Ofcom to limit changes only to those requirements not already covered by existing requirements and to restrict their application to only certain services if necessary. The respondent added that it would also make compliance easier for licensees as they would not need to consider an additional code, part of which may overlap with existing rules and guidance.

- 3.46 We agree that any new ECTT-related rules do not have to be in a separate Code, and have removed references to a 'new Code' in this condition - as can be seen in the template licences [on the webpage for this consultation](#).

Compliance condition

- 3.47 The respondent also said that the proposed additions we had made to the Compliance condition of the licence should be amended to expressly clarify that their application is (save as otherwise indicated elsewhere) limited to transfrontier services available in the UK and another ECTT Party.
- 3.48 Ofcom agrees, and has amended the wording of the proposed licence condition by making it clearer when the condition applies. This proposed new wording of this condition can be seen in the licence templates [on the webpage for this consultation](#).

Listed Events condition

- 3.49 The respondent noted that paragraphs 7.13 and 7.14 of the Explanatory Memorandum to the Exit Regulations, state that the current listed events regime will "be retained to ensure continuity", that it will be extended "to apply to ECTT countries (which are not EEA States)" and that "EEA States which are also ECTT countries will continue to be subject to the existing regime".
- 3.50 The respondent said that the proposed additions to the Listed Events condition applies in relation to all ECTT Parties, regardless of whether they are also part of the EEA. The respondent suggested that the proposed additions to the Listed Events condition should be amended to apply only in relation to ECTT Parties that are not also part of the EEA.
- 3.51 We note that the ECTT regime is implemented by reference to opinions of and guidance given by the ECTT Standing Committee which could, in theory, result in differences between that and the regime in the AVMSD. So to ensure and future-proof compliance with both regimes, we consider the use of both proposed conditions to be appropriate. The conditions that we are proposing can be seen in the licence templates [on the webpage for this consultation](#).

Comments and representations – new definitions and licence conditions

- 3.52 We are inviting comments and representations on the changes Ofcom proposes to make to the conditions of broadcast licences, as set out in the licence templates [on the webpage for this consultation](#) as required under section 3(4)(b) of 1990 Act.

Question 3: Do you have any comments on Ofcom's proposed changes?

- 3.53 Comments on the proposed changes are invited by 5pm on Thursday 8 October 2020. Subject to consideration of responses, we intend to give notice of the proposed changes shortly after, to come into effect at the end of the transition period.

4. Other changes that we're proposing to make

Background

- 4.1 Under section 4(1)(a) of the 1990 Act, Ofcom has a duty to include, in each broadcaster's licence, conditions that it thinks are appropriate to enable it to carry out its duties (and any duties imposed on licence holder's) under the 1990 Act, the Broadcasting Act 1996 (the "1996 Act") or the Communications Act 2003.
- 4.2 These include Ofcom's duties to secure:
- a) the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and designed to appeal to a variety of tastes and interests;
 - b) the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services;
 - c) the application in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from both unfair treatment in programmes included in such services and unwarranted infringements of privacy resulting from activities carried on for the purposes of such services; and,
 - d) that the character of a licenced broadcast radio service, as proposed by the licence holder when making its application, is maintained during the period for which the licence is in force.
- 4.3 We feel that the current conditions included in broadcast licences issued by Ofcom would benefit from changes which would make them easier to use and understand, and to deliver more effective, consistent and timely enforcement. This section of the consultation sets out the changes we propose to make in order to achieve this. The proposed changes cover the broadcast licences we currently issue and any broadcast licences that may be issued in future, including community digital sound programme licences and small-scale radio multiplex licences.
- 4.4 The 1990 Act allows Ofcom to make changes to the conditions of broadcast licences, and include new conditions, by varying them, provided licensees have been given a reasonable opportunity to make representations about the proposed changes. This consultation gives licensees the opportunity to do so.

Changes that we're proposing

Force majeure

- 4.5 A “force majeure” condition is included in all TLCS, DTPS, PS-DTPS, L-DTPS, DRS, RTSL-E, DTAS, ASPS,⁷ CR, DSPS,⁸ AS, DAS, RLCS, LRSL, SRSL, ADS-RSL, R-MUX and DTT-MUX licences and removes responsibility from the licence holder for any breach of a licence condition that occurs due to circumstances beyond their control.
- 4.6 Its inclusion is important because it protects licensees from enforcement action in situations where they have no power to prevent a breach from occurring. For example, the “force majeure” condition was recently engaged to protect broadcasters who were unable to meet the programming commitments set out in their licences due to factors related to the spread of the Coronavirus and the subsequent period of lockdown.
- 4.7 However, the wording of the condition currently includes in the list of examples where a licensee’s responsibility for breaching a condition should be removed, situations where there has been an *“accident or breakdown of any equipment or apparatus (caused otherwise than by the wrongful act neglect or default of the Licensee his servants or agents)”*.
- 4.8 We consider that licensees have a responsibility to put procedures and contingency plans in place to prevent any accident or breakdown of equipment from causing a breach of the licence wherever possible. In order to make clearer that the “force majeure” condition will only be engaged in situations where a breach of the licence has occurred due to circumstances beyond a licensee’s control, Ofcom proposes to remove this wording from the condition, and to add a reasonableness requirement to it.
- 4.9 The proposed amendments to the “force majeure” condition in these licences are set out below, with the text we propose to remove ~~struck through~~ and proposed addition **in bold**:

*“The Licensee shall not be in any way responsible for any failure to comply with any Conditions of this Licence directly or indirectly caused by or arising from any circumstances beyond the **reasonable** control of the Licensee including (without limitation) ~~accident or breakdown of any equipment or apparatus (caused otherwise than by the wrongful act, neglect or default of the Licensee his servants or agents),~~ war, damage by the Queen’s enemies, terrorism, riot, rebellion, civil commotion, interference by strike, lockout, sit-in, picket or other industrial dispute or action”.*

⁷ Both national (“AN”) and local (“AL”)

⁸ Both national (“DN”) and local (“DP”)

Retention and production of recordings

- 4.10 The requirement for licensees to adopt procedures for the retention and production of recordings of a service's broadcast output is included in all TLCS, DTPS, PS-DTPS, L-DTPS, DRS, RTSL-E, DTAS, ASPS, CR, DSPS, AS, DAS, RLCS, LRSL, SRSL and ADS-RSL licences.
- 4.11 This condition is important because Ofcom needs to view or listen to recordings of a service's output to be able to assess its compliance with the relevant codes and rules and to assess whether a broadcaster is complying with any programming commitments included in its licence.
- 4.12 The current wording of the condition says that a licensee should have procedures in place for the retention and production of recordings *"of any programme which is the subject matter of a Standards Complaint and in relation to the production of recordings of any programme which is the subject of a fairness complaint the Licensee shall also comply with the requirements of Condition [X] below"*.
- 4.13 However, we feel that this wording could be unclear, in that the obligation to retain and produce recordings for a programme which is the subject of a fairness complaint is conveyed only by the word "also". Clearly, the licence condition is intended to secure, and Ofcom expects, that broadcasters will make and retain recordings of all of their broadcast output for the period set out in the licence and produce them on request, regardless of whether any complaint has been received and what the nature of that complaint may be.
- 4.14 We also expect that any recording retained by a licensee and produced to Ofcom appropriately reflects the quality of the content as it was originally broadcast. In recent years, we have in some cases been provided with recordings that are of such poor quality they are difficult for us to assess. We are therefore proposing an amendment to the wording of this condition, to make sure that it more clearly reflects these obligations.
- 4.15 In addition to the above, we are aware that some EPG providers face challenges in retaining recordings of their EPG in *"sound and vision"* as is currently required by their licences. Variations of EPGs sometimes exist depending on region and the form of the device used to access them. We do not consider it necessary for an EPG provider to retain a separate recording of each such regional variation, as for EPGs we are concerned with the text the viewer sees. We therefore propose to specify in the condition that EPG providers may instead retain the information contained in the EPG in an alternative form (so long as it is human readable), showing an accurate and complete record of its EPG service including all variations that viewers can receive. We envisage that this could be done, for example, by way of an Excel spreadsheet. We consider this to be a deregulatory measure.
- 4.16 The proposed amendments to the "retention and production of recordings" licence condition included in all TLCS, DTPS, PS-DTPS, L-DTPS, RTSL-E, DRS and DTAS licences are

set out below, with the new additions **in bold** and the text we propose to remove struck through:

*“The Licensee shall adopt procedures acceptable to Ofcom for the retention and production of recordings, **in broadcast quality of the Licensed Service’s broadcast output** in sound and vision. **If the Licensed Service is an EPG, it may instead adopt procedures acceptable to Ofcom for the retention and production of the information contained in the EPG in human-readable form. The EPG data should be clearly visible as well as the relevant channel, time, date and region.** ~~of any programme which is the subject matter of a Standards Complaint and in relation to the production or recordings of any programme which is the subject of a fairness complaint the Licensee shall also comply with the requirements of Condition [x] below”.~~*

- 4.17 The proposed amendments to the “retention and production of recordings” licence condition included in all ASPS, CR, DSPS, AS, DAS, RLCS, LRSL, SRSL and ADS-RSL licences are set out below, with the new additions **in bold** and the text we propose to remove struck through:

*“The Licensee shall adopt procedures acceptable to Ofcom for the retention and production of recordings, **in broadcast quality, of the Licensed Service’s broadcast output.** ~~of any programme which is the subject matter of a Standards Complaint and in relation to the production or recordings of any programme which is the subject of a fairness complaint the Licensee shall also comply with the requirements of Condition [x] below”.~~* We are not proposing to make any changes to the licence condition other than those set out above, for example, we are not proposing to make any changes to the retention period for recordings.

General provision of information to Ofcom and notifications to Ofcom

- 4.18 The “general provision of information to Ofcom” licence condition is included in all TLCS, DTSPS, PS-DTSPS, L-DTSPS, DRS, RTSL-E, DTAS, ASPS, CR, DSPS, AS, DAS, RLCS, LRSL, SRSL, ADS-RSL, R-MUX and DTT-MUX licences. Part (1) of the condition in most broadcast licences (apart from ADS-RSL licences where this is reflected in part (2)) requires broadcasters to provide Ofcom with information on request for the purposes of fulfilling our statutory duties. The remaining parts of this condition set out specific situations or events that licensees are required to notify us of for this purpose as and when they may occur.
- 4.19 Ofcom is proposing an expansion and clarification of the notification requirements. We propose to move parts of the “general provision of information to Ofcom” condition which set out specific situations or events that licensees are required to notify us of to a new condition “notifications to Ofcom”. The new condition will also include the requirements

on licensees to notify Ofcom of a change of control to the licensee, of any changes that may affect the determination of a licensed service's jurisdiction, and some additional wording around notification of any applicable statutory restrictions.

- 4.20 We are proposing to remove the requirement in the "general provision of information to Ofcom" condition that requires licensees to supply Ofcom of details of any change of their country of establishment. This requirement is only included in DTPS, PS-DTPS, L-DTPS and DTAS licences. We are proposing to remove the requirement because, under the draft AVMS Regulations, Ofcom will be required to make sure licensees notify us of any changes that might affect the determination of a service's jurisdiction. This new requirement is broader than the existing condition in DTPS, PS-DTPS, L-DTPS and DTAS licences; requiring licensees to provide more information to Ofcom than just details of any change of the licensee's country of establishment. The full details of this new condition, and the background to it, are set out in Section Two of this consultation above.
- 4.21 In all other licences, we are not proposing to make any changes to part (1) of the "general provision of information to Ofcom" condition (part (2) for ADS-RSL licences).
- 4.22 The current parts of the "general provision of information to Ofcom" licence condition which set out specific situations or events that licensees are required to notify us of for the purposes of fulfilling our statutory duties vary depending on the type of licence held.
- 4.23 The "provision of information relating to/following a change of control" condition also appears in all broadcast licences and requires the licensee to notify Ofcom of information about a change of control to the licensee. Ofcom is proposing to move these requirements to a new "notifications to Ofcom" licence condition.
- 4.24 We are also proposing to replace the existing wording of the "provision of information relating to/following a change of control" condition in all broadcast licences. This is because it is currently geared towards standard corporate entities with shareholders who exercise voting rights, and directors appointed by the shareholders to manage the company. This does not fully reflect all the circumstances in which control over a licensee is exercised in practice, or the statutory definition of control.
- 4.25 The proposed wording of the new "notifications to Ofcom" condition for these licence types is set out below. This wording would be included in addition to the existing parts of the "general provision of information to Ofcom" condition setting out situations or events that licensees are required to notify us of, which will be included under the new condition as they currently stand without changes.

“The Licensee shall notify Ofcom if there is a change in the persons having control over the Licensee within the meaning of Schedule 2, Part I paragraph 1(3) of the 1990 Act.”⁹

In particular (but without prejudice to the generality of the foregoing) the Licensee shall notify Ofcom as soon as reasonably practicable:

- (a) of any changes to persons that hold a ‘majority interest’ in the Licensee;*
- (b) of any changes to persons who exercise ‘de facto’ control over the Licensee;*
and
- (c) if any person in control of the Licensee enters into a ‘control arrangement’.*

For the purposes of Condition x(a) to (c):

- (a) a person holds a ‘majority interest’ where they hold, or are beneficially entitled to, more than 50 per cent of the equity share capital, or possess more than 50 per cent of the voting power in the company;*
- (b) a person can exercise ‘de facto control’ where they do not have a majority interest, but are regarded as controlling a company where it is reasonable, having regard to all the circumstances, to expect that they would (if they chose to) be able in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of the body are conducted in accordance with their wishes;*
- (c) a person in control of the Licensee enters into a ‘control arrangement’ where they hold, or are beneficially entitled to, 50 per cent of the company’s equity share capital, or possess 50 per cent of the voting power in the company, and have an arrangement with any other participant in the company as to how any voting power possessed by either of them is to be exercised or not. ‘Arrangement’ includes any agreement or arrangement whether or not it is, or is intended to be, legally enforceable; and*
- (d) a person shall be treated—*
 - (i) as holding, or being beneficially entitled to, any equity share capital which is held by a body corporate which he controls or to which such a body corporate is beneficially entitled, and*
 - (ii) as possessing any voting power possessed by such a body corporate.*

⁹ Ofcom’s [guidance on the definition of control of media companies](#) sets out its approach to determining whether a person “controls” a company holding a broadcast licence under the statutory definition of “control” within the meaning of Schedule 2, Part I paragraph (13) of the 1990 Act.

- 4.26 We recognise that this change will require licensees to apply a slightly different set of criteria in determining when to notify Ofcom of changes to control. But we consider the change to be relatively minor and proportionate to the benefits, because more relevant information will be provided to Ofcom.

Revocation

- 4.27 The licence condition “revocation” is included in all broadcast licences and sets out situations where Ofcom has the power to revoke broadcast licences, and the procedure it will follow for doing so.
- 4.28 Under section 111B of the 1990 Act, Ofcom has the power to revoke radio licences in cases where we are satisfied that a licensee has broadcast material likely to encourage or incite to crime or lead to disorder. In these cases, Ofcom can suspend the licence from the time the notice of revocation is served on the licensee until the revocation takes effect or Ofcom decides not to revoke the licence. Until 2017, the power only existed in relation to RLCS licences, but the Digital Economy Act 2017 extended it to all radio licences issued under the relevant Chapter of the 1990 Act.
- 4.29 However, it was not an administrative priority for Ofcom at the time to update licences (as the power to revoke existed anyway) so this provision is not currently reflected in the “revocation” conditions included in licences for ASPS, CR, DSPS AS, LRSL, SRSL and ADS-RSL licences.
- 4.30 We consider the licensing regime is more transparent if these licence types accurately reflect Ofcom’s processes and powers for revoking the licence in these types of cases. We therefore propose to take this opportunity to amend the condition included in these licence types to ensure they do so. We do not consider that this represents a change to the applicable regulatory regime. In the course of preparing this consultation, we also noticed a cross referencing error in the relevant condition of the RLCS licence, which we will correct.
- 4.31 The proposed addition to the “revocation” condition in ASPS, CR, DSPS, AS, LRSL, SRSL and ADS-RSL licences is set out below:
- (a) *“If Ofcom is satisfied that the Licensee has included in the Licensed Service one or more programmes containing material likely to encourage or incite to crime or to lead to disorder such that the Licensee has thereby failed to comply with Condition [x] 5(1)(b and that the failure is such as to justify the revocation of the Licence, Ofcom shall serve on the Licensee a notice:*
 - (i) *stating that Ofcom is so satisfied;*
 - (ii) *specifying the respects in which, in the opinion of Ofcom, the Licensee has failed to comply with Condition [x];*

- (iii) stating that Ofcom may revoke the Licence after the end of the period of twenty-one days beginning with the date on which the notice is served on the Licensee;*
 - (iv) informing the Licensee of his right to make representations to Ofcom within that period about the matters complained of; and*
 - (v) suspending the Licence as from the time when the notice is served on the Licensee until the revocation takes effect or Ofcom decide not to revoke the Licence.*
- (b) If Ofcom, having considered any representations about the matters complained of made to it within the time period above in Condition [x] (5)(a)(ii), is satisfied that it is necessary in the public interest to revoke the Licence in question, they shall serve on the Licensee a notice revoking the Licence. However such a revocation notice shall not take effect until the end of the period of twenty-eight days beginning with the day on which the revocation notice was served on the Licensee”.*

Interest on late payments

- 4.32 The licence condition “interest on late payments” is included in all TLCS, DTPS, PS-DTPS, L-DTPS, DRS, RTSL-E, DTAS, ASPS, CR, DSPS, AS, DAS, RLCS, LRSL, SRSL, ADS-RSL, R-MUX and DTT-MUX licences and states that a three per cent interest shall be accrued daily on any licence fees paid after the payment deadline given by Ofcom.
- 4.33 Ofcom does not have a statutory power to charge interest. We have various other statutory means of enforcing debts owed to us, and interest is ultimately a matter for the courts to award. For transparency, we therefore propose to remove this condition from these licences.

The language we use in licences

- 4.34 Our licences currently use masculine language throughout – for example, ‘he/him/his’. The Interpretation Act 1978 applies for the purpose of interpreting our licences, section 6 of which says that, unless otherwise stated, words using the masculine gender should be read as including the feminine gender, and vice versa. However, we note that using gender neutral language is established best practice in other sectors, such as [the legal profession](#), and [in Government](#).
- 4.35 Similarly, Ofcom seeks to promote diversity, inclusion and equality inside our organisation and in the wider sectors we regulate. We are therefore proposing to use gender neutral language in our licences – for example, using ‘they/them/their’ instead of assuming the masculine.

Comments and representations

- 4.36 We are inviting comments and representations on the changes Ofcom proposes to make to the conditions of broadcast licences, as required under section 3(4)(b) of 1990 Act.

Question 4: Do you have any comments on Ofcom's proposed changes?

- 4.37 Comments on the proposed changes are invited by 5pm on Thursday 8 October 2020. Subject to consideration of responses, we intend to make the proposed changes shortly after, to come into effect immediately.

A1. Licence condition names and numbers

A1.1 The below tables list the licence conditions names that we have mentioned in this consultation, and the corresponding existing licence condition number for each type of licence.

A1.2 Existing condition numbers for television licences are set out below:

		Number of existing licence conditions in television licences						
Licence type		TLCS	DTPS	L-DTPS	PS-DTPS	RTSL-E	DRS	DTAS
Name of existing licence condition	Provision of [service type] service by the Licensee	2	2	2	2	2	2	2
	Definitions and interpretation	1	1	1	1	1	1	1
	Compliance	17	17	22	17	15	26	14
	Listed Events	7	7	11	7	6	15	n/a
	Force majeure	26	26	32	26	23	35	23
	Retention and production of recordings	11	11	16	11	9	19	8
	General provision of information to Ofcom	12	12	17	12	10	20	9
	Provision of information [relating to/following] a change of control	13	13	18	13	11	21	10
	Revocation	29	29	35	29	26	38	26
	Interest on late payments	27	27	32	27	23	36	24

A1.3 Existing condition numbers for radio licences are set out below:

Number of existing licence conditions in radio licences												
Licence type		ASPS (national)	ASPS (local)	CR	DSPS (national)	DSPS (local)	DAS	AS	RLCS	LRSL	SRSL	ADS-RSL
Name of existing licence condition	Provision of [service type] service by the Licensee	2	2	2	2	2	2	2	2	2	2	2
	Definitions and interpretation	1	1	1	1	1	1	1	1	1	1	1
	Compliance	17	15	15	15	15	14	14	15	15	15	15
	Listed Events	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	Force majeure	27	24	25	25	25	24	23	25	24	23	24
	Retention and production of recordings	10	8	8	7	7	7	8	8	8	8	8
	General provision of information to Ofcom	11	9	9	8	8	8	9	9	9	9	9
	Provision of information [relating to/following] a change of control	12	10	10	10	10	10	10	10	10	10	10
	Revocation	32	29	30	29	29	28	28	29	29	28	29
	Interest on late payments	27	26	27	26	26	25	26	26	26	25	26

A1.4 Existing condition numbers for multiplex licences are set out below:

Number of existing licence conditions in multiplex licences					
Licence type		R-MUX (local)	R-MUX (national)	DTT-MUX (local)	DTT-MUX (national)
Name of existing licence condition	Provision of [service type] service by the Licensee	2	2	2	2
	Definitions and interpretation	1	1	1	1
	Compliance	14	15	23	14
	Listed Events	n/a	n/a	n/a	n/a
	Force majeure	20	21	27	21
	Retention and production of recordings	n/a	n/a	n/a	n/a
	General provision of information to Ofcom	7	8	18	8
	Provision of information [relating to/following] a change of control	8	9	19	9
	Revocation	23	24	30	24
	Interest on late payments	21	22	28	22

A2. Responding to this consultation

How to respond

- A2.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on Thursday 8 October 2020.
- A2.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-3/proposed-changes-to-broadcast-licence-conditions>. You can return this by email to the address provided in the response form.
- A2.3 If your response is a large file, or has supporting charts, tables or other data, please email it to licenceconditionchanges@ofcom.org.uk, as an attachment in Microsoft Word format, together with the [cover sheet](#). This email address is for this consultation only, and will not be valid after 8 October 2020.
- A2.4 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A2.5 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A2.6 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A2.7 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A2.8 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex Five. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A2.9 If you want to discuss the issues and questions raised in this consultation, please contact Rowena Burke on 020 783 4425, or by email to rowena.burke@ofcom.org.uk.

Confidentiality

- A2.10 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources

or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on [the Ofcom website](#) as soon as we receive them.

- A2.11 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A2.12 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A2.13 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

Next steps

- A2.14 Following this consultation period, Ofcom plans to publish a statement in November 2020.
- A2.15 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A2.16 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex Three.
- A2.17 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A2.18 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A3. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A3.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A3.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A3.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A3.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A3.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A3.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A3.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A4. Consultation coversheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

A5. Consultation questions

Questions by section

Section 2: Changes resulting from the revised Audiovisual Media Services Directive

Question 1: Do you have any comments on Ofcom's proposed changes?

Section 3: Changes resulting from the Broadcasting (Amendment) (EU Exit) Regulations 2019

Questions 2 and 3: Do you have any comments on Ofcom's proposed changes?

Section 4: Other changes that we're proposing to make

Question 4: Do you have any comments on Ofcom's proposed changes?