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## Statement on changes to broadcast licence conditions

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

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

Non-confidential version (redactions marked with [X])

**STATEMENT:**

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# 1. Overview

- 1.1 This Statement sets out changes that Ofcom is making to the conditions included in television, radio and multiplex broadcast licences issued under the Broadcasting Acts 1990 and 1996.
- 1.2 These include two amendments to television broadcasting licences to reflect the new requirements of the revised Audiovisual Media Services Directive (“AVMSD”) and the UK Government’s implementation of it through the [Audiovisual Media Services Regulations 2020](#) (“the AVMS Regulations”) which came into force on 1 November 2020. Under the terms of the Withdrawal Agreement, the UK Government committed to implementing EU legislation up until the end of the transition period, which ends on 31 December 2020. Beyond this, the revised AVMSD will continue to have effect in UK legislation as ‘retained’ EU law.
- 1.3 Our proposals for television licences also reflect changes to legislation which will take effect following the end of the transition period. Finally, this Statement also sets out some other changes we are making to all broadcast licences.
- 1.4 Throughout this Statement, 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 Statement and the corresponding existing licence condition number for each type of licence in Annex 1.

## What we have decided – 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. This replaces the existing requirement in some licences to supply Ofcom of details of any change of a licensee’s country of establishment; 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. 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. We no longer consider it necessary to require licensees to give the name of any other EU or EEA country whose jurisdiction the service falls under.

### 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, if the licensed service is a programme service that is receivable in an ECTT Party other than the United Kingdom;
- 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 making (all service licences, including those we may license in future <sup>1</sup>)

- 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”), <sup>2</sup> community radio service (“CR”), digital sound programme service (“DSPS”), <sup>3</sup> 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 clearer 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, and is fit for purpose in cases where the licensee is an EPG provider. We have dropped our proposal that recordings should be of “broadcast quality”;
- 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;
- Removal of the requirement in the “general provision of information to Ofcom” condition contained in DTPS, PS-DTPS, L-DTPS and DTAS specifying that income and expenditure returns should be half-yearly;
- 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.

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<sup>1</sup> For example, community digital sound programme licences and small-scale radio multiplex licences.

<sup>2</sup> Both national (“AN”) and local (“AL”)

<sup>3</sup> Both national (“DN”) and local (“DP”)

## Next steps

- 1.5 We will shortly be varying the broadcast licences to reflect these changes, starting first with television broadcast licences. We will complete the variations to television broadcast licences by the end of the year, and all changes will come into effect from the end of the transition period – 11pm on 31 December 2020.
- 1.6 We aim to complete the variations to radio and multiplex licences as soon as possible after this. The AVMSD and Exit Regulations changes do not apply to radio and multiplex licences – so only the other changes that we are making will be reflected in the licence variations for radio and multiplex licences. The changes will come into effect from the end of the transition period (11pm on 31 December 2020) if a licence is varied before this date. If a licence is varied after this date, the changes will have effect immediately.
- 1.7 In the course of preparing this Statement, we noticed some minor further changes we thought it appropriate to make to licences, i.e.
- a) A cross referencing error in the revocation condition of the TLCS licence, which we propose to correct; and
  - b) Out of date wording in the definition of “Code on Electronic Programme Guides” in TLCS, DTPS, PS-DTPS and DTAS licences (see paragraphs 4.32 and 4.33 below), which we propose to delete.
- 1.8 We published notice of these proposed minor changes on our website on 4 November 2020. Depending on responses, we intend to include these changes, too, in the notices of amendments that we serve on licensees following this Statement.

The overview section in this document is a simplified high-level summary only. The decisions we have taken, 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) both of the Broadcasting Act 1990 (“the 1990 Act”) and the Broadcasting Act 1996 (“the 1996 Act”), Ofcom may include in television licences such conditions it considers appropriate having regard to any duties which are or may be imposed on Ofcom, or on the licence holder, by or under the 1990 Act, the 1996 Act or the Communications Act 2003 (“the 2003 Act”).
- 2.2 Under Section 211 the 2003 Act, 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 Under the terms of [the Withdrawal Agreement](#), the UK Government 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 for television and on-demand services](#) in 2019 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.
- 2.5 The Government’s [Audiovisual Media Services Regulations 2020](#) (“the AVMS Regulations”) were laid before Parliament on 30 September 2020 and came into force on 1 November 2020. They make two changes to the broadcasting legislation that are relevant to the licensing framework for television services. Firstly, a new requirement is placed on Ofcom 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 under the UK’s jurisdiction.
- 2.6 Secondly, Ofcom must include licence conditions requiring providers of these services to notify us of any changes that might affect the determination of the service’s jurisdiction.
- 2.7 Licensees are already required to provide their contact details, Ofcom’s contact details and those of any relevant co-regulator but these requirements are not currently reflected in the licences for PS-DTPS or DRS services. The revised AVMSD adds a requirement that information concerning the Member State having jurisdiction over the service must also be made “easily, directly and permanently accessible to the recipients of a service”.
- 2.8 On 10 September 2020, we published a consultation which set out the following proposals to give effect to these requirements.

## Our consultation proposals

### Addition of a new licence condition

- 2.9 In our consultation, Ofcom proposed to include a requirement under a new “notifications to Ofcom” condition (see Section Four of this Statement) in the licences for TLCS, DTPS, PS-DTPS, L-DTPS, DRS, RTSL-E and DTAS services which would require for licensees to notify us of any changes that might affect determination of their service’s jurisdiction.
- 2.10 Although some of these licence categories (DTPS, PS-DTPS, L-DTPS and DTAS licences) already required the licensee to supply Ofcom with details of any change to a licensee’s country of establishment we did not consider the existing “general provision of information to Ofcom” condition was broad enough to meet the requirement to notify Ofcom of any changes that might affect the determination of a licensed service’s jurisdiction. We therefore proposed the same new “notifications to Ofcom” condition should be included for all of the above categories of licence.

### Amendments to existing licence conditions

- 2.11 We also proposed adding a new requirement to the existing “provision of [service type] service by the Licensee” condition for providers to publish, or to provide recipients of the service with, the name of the country or countries whose jurisdiction the service falls under. To ensure consistency across all relevant licence categories, we also proposed to amend the “provision of [service type] service by the Licensee” condition in PS-DTPS and DRS licences to reflect the existing requirement in TLCS, DTPS, L-DTPS, RTSL-E and DTAS licences to publish, or provide recipients of the service with the licensee’s name, address, electronic address, the name of Ofcom any the name of any relevant co-regulator.

## Summary of responses

- 2.12 Ofcom received two responses to this section of our consultation.

### Addition of a new licence condition

- 2.13 We did not receive any responses on our proposal to introduce a new licence condition requiring licensees to notify us of any changes that might affect the determination of a licensed service’s jurisdiction.
- 2.14 Accordingly, we will be amending the licences to introduce the new licence condition as proposed.

## Amendments to existing licence conditions

### Responses received

- 2.15 John Lyons suggested that the proposed wording of the “provision of [service type] service by the Licensee” licence condition be amended to include the additional text in bold: “...confirmation that the service falls, **(and is received)**, under the UK’s jurisdiction”.
- 2.16 A confidential respondent suggested the condition be made more specific as to how providers should publish information. [X]

### Ofcom’s assessment and conclusion

- 2.17 We have noted John Lyons’ suggestion, but we do not believe the suggested addition would comply with the AVMSD or with the licensing framework after the end of the transition period. A service can fall to the UK’s jurisdiction under the AVMSD but not be receivable here.
- 2.18 We also note the suggested additional wording from the confidential respondent. The AVMSD does not prescribe how providers should publish information for recipients of the service and we do not consider there is any need for Ofcom to be more prescriptive in the wording of the licence condition. This gives the flexibility for Licensees to determine an appropriate manner of publication for their service, which could include adopting the approach suggested by the confidential respondent.
- 2.19 Because of this, we are not including the suggested additions in the wording of the licence condition.
- 2.20 We no longer consider it necessary in order to comply with the AVMSD, to require licensees to give the name of any other EU or EEA country whose jurisdiction the service falls under, and so will not be including this requirement in licences.

## Our decision

- 2.21 We have decided to introduce a new licence condition for TLCS, DTPS, PS-DTPS, L-DTPS, DRS, RTSL-E and DTAS services requiring licensees to notify us of any changes that might affect the determination of a licensed service’s jurisdiction. This will replace the existing requirement in DTPS, PS-DTPS, L-DTPS and DTAS licences to supply Ofcom of details of any change of a licensee’s country of establishment.
- 2.22 We have decided to amend the existing requirement in the “provision of [service type] service by the Licensee” licence condition for TLCS, DTPS, L-DTPS, RTSL-E and DTAS services to include the new requirement for service providers to publish, or to provide recipients of the service with, confirmation that the service falls under the UK’s jurisdiction.
- 2.23 We have also decided to amend the “provision of [service type] service by the Licensee” licence condition for PS-DTPS and DRS services. These licences did not previously contain the AVMSD Article 5 obligation to publish or provide recipients of the service with the licensee’s name, address and contact details including email address or website. We

propose to add these requirements together with the new requirement to publish, or to provide recipients of the service with, confirmation that the service falls under the UK's jurisdiction.

- 2.24 We consider that the changes we have proposed merely implement legal obligations, such that there is no additional impact on licensees.

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

### Background and legal framework

- 3.1 This section sets out the changes to licences that we are making 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.<sup>4</sup> Unless changed, the Exit Regulations will come into force 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 the 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:
- a) Where a service is based, e.g. where the head office and editorial decisions are made.
  - b) Where a service is broadcasting to, e.g. to the UK or another country.
  - c) How a service broadcasts, e.g. through cable, satellite or online.
- 3.7 The amendments to licensing arrangements are two-fold:
- 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

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<sup>4</sup> SI 2019/224

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 by that country to the standards required by the ECTT.

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. The changes that we are making take into account representations received in response to those steps.

3.9 On 10 September 2020, we published a [consultation which set out Ofcom's proposed changes to broadcast licence conditions](#), and gave licensees the opportunity to make representations about them.

## Our consultation proposals

### Regulated EPG changes – new licence conditions

3.10 In our consultation, we proposed new licence conditions relating to the provision of Electronic Programme Guides ('EPGs').

3.11 An EPG is a service that consists of the listing or promotion of programmes or programme services and provides access to them.<sup>5</sup> EPGs are currently provided in the UK under TLCS and DTAS licences issued by Ofcom.

3.12 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.

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<sup>5</sup> 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.

- 3.13 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’ at the end of the transition period. The changes we have consulted on will be made to all TLCS and DTAS licences.
- 3.14 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. Ofcom intends to publish on our website a list of the EPGs we consider to be Regulated EPGs as soon as possible after the end of the transition period.

### **Non-EPG changes – new definitions and licence conditions**

- 3.15 To implement the new regulatory framework, Ofcom proposed in its consultation to 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).

## **Summary of responses**

- 3.16 Ofcom received two responses to this section of our consultation.

### **Regulated EPG changes – new licence conditions**

- 3.17 We did not receive any responses on our proposals to insert new 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.

- 3.18 Accordingly, we will be amending the licences to introduce the new licence condition as proposed.

## Non-EPG changes – new definitions and licence conditions

### Responses received

- 3.19 One respondent, who asked for their name to be kept confidential, [redacted], suggested that the TLCS licence might benefit from greater clarity regarding the EPG/EPG provider requirements. They gave the example of the proposed introduction on broadcasters to provide, on request, information to users on capital composition and how services are financed. They noted that these requirements are derived from the ECTT, and questioned if the information requirements should also apply to EPG providers, given that the ECTT does not set out requirements for parties that have signed and ratified the ECTT to have a licensing or authorisation regime for EPG providers.
- 3.20 Sky responded to suggest that Ofcom should clarify what information licensees would need to provide and the level of detail required in response to the new obligation placed on licensees by the ECTT to provide, upon request, information to users on the licensee's capital composition and how services are financed. Sky continued to state that it would not be appropriate for Ofcom to require broadcasters to disclose this type of information in response to a request from a user for information about the licensee's 'capital composition' and requested that Ofcom make it clear that licensees will not be required to disclose confidential information to end users as a result of these changes.
- 3.21 Sky also welcomed Ofcom's confirmation that there was no need for a separate code on ECTT-related content rules, and confirmation that any new rules would be included in the existing Broadcasting Code. It noted, however, that any such changes should be consulted on as soon as possible in order to minimise the risk of confusion.

### Ofcom's assessment and conclusion

- 3.22 We are mindful that EPG service providers will hold either TLCS or DTAS licences – there is no separate 'EPG licence'. TLCS and DTAS licences are also held by licensees who would be providing different genres and types of services than an EPG.
- 3.23 However, we recognise that the ECTT does not require parties that have signed and ratified it to have a licensing or authorisation regime for EPG providers, nor does it apply to services that do not cross borders.
- 3.24 The provisions concerned were included in the ECTT for reasons of the public interest in transparency, to enable the public to form an opinion on the value which they should give to the information, ideas and opinions disseminated by the media.<sup>6</sup> This does not suggest

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<sup>6</sup> See Council of Europe [Explanatory Report](#) to the European Convention on Transfrontier Television (Strasbourg, 5.V.1989) at paragraph 149, and the [Recommendation](#) to which it refers.

- that there is a need to extend them to EPG providers, and to do so may impose costs upon them.
- 3.25 We have considered whether they ought to be extended to programme services that do not cross borders, but recognise that this would be likely to impose costs on them. Companies that are incorporated in the UK are subject to requirements to file information on structure of share capital and persons with significant control with Companies House.
- 3.26 We are therefore including the provision in all licences but have amended the wording to make it clear that the obligation arises only to the extent that the service concerned is a programme service that can be received in an ECTT State other than the UK (within the meaning of the Exit Regulations).
- 3.27 Concerning the provision of information to end users regarding a licensee's 'capital composition' and financing of services, we note that the composition of a licensee's capital or shareholdings is information which would be public for an entity incorporated in the UK and many other jurisdictions around the world. But not all jurisdictions in the world require this level of transparency. Securing the objectives of the ECTT therefore does potentially require the disclosure of information which might not already be public, and we cannot accept Sky's proposition that only non-confidential information is caught.
- 3.28 However, the Explanatory Report to the ECTT at paragraph 150 makes it clear that the provision operates:
- 3.29 *"within the framework of the general rules on provision of information and shall duly respect, in particular, the rules on data protection, professional secrecy and commercial secrets. It follows that information on the composition of the capital and on the mode of financing means information of a general nature on financial sources (public and/or private, licence fee and/or commercial resources) and breakdown of the capital."*
- 3.30 We therefore do not consider that there is any need for Ofcom to give any further guidance on what is required by this new condition.
- 3.31 In response to Sky's request for any changes to the Broadcasting Code to be consulted on as soon as possible, we can confirm that we will shortly be consulting on such changes.

## Our decision

- 3.32 We have decided to introduce a new licence condition for TLCS and DTAS services requiring EPG providers to ensure that services listed on 'regulated EPGs' will be appropriately licensed when the Exit Regulations come into force.
- 3.33 We have decided to make additions and changes to definitions and licence conditions of TLCS, DTPS, PS-DTPS, L-DTPS, RTSL-E, DRS and DTAS licences, including the new definitions of terms used in the regime: ECTT; ECTT Party; and Regulated EPG.
- 3.34 We have decided to remove references to EU laws that will no longer be appropriate.
- 3.35 We have decided to introduce a new licence condition requiring 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, but this will only apply to the extent that the service concerned is a programme service that is receivable in an ECTT Party other than the United Kingdom.

- 3.36 We have decided to require broadcasters to comply with the ECTT content rules, to the extent that they broadcast services:
- a) receivable in all parts of another ECTT Party using standard consumer equipment; and
  - b) 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.
- 3.37 We have decided 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).
- 3.38 We consider that the changes we have proposed merely implement legal obligations, such that there is no additional impact on licensees.

## 4. Other changes we are making

### 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 holders) under the 1990 Act, the Broadcasting Act 1996 (the "1996 Act") or the Communications Act 2003 ("the 2003 Act").
- 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 Statement sets out the changes we are making in order to achieve this. The 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.
- 4.5 On 10 September 2020, we published a [consultation which set out Ofcom's proposed changes to broadcast licence conditions](#), and gave licensees the opportunity to make representations about them.

## Our consultation proposals

### Force majeure

- 4.6 A “force majeure” condition is included in all TLCS, DTPS, PS-DTPS, L-DTPS, DRS, RTSL-E, DTAS, ASPS,<sup>7</sup> CR, DSPS,<sup>8</sup> 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.
- 4.7 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 has been 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 periods of lockdown.
- 4.8 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)”*.
- 4.9 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 proposed to remove this wording from the condition, and to add a reasonableness requirement to it.

### 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”*.

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<sup>7</sup> Both national (“AN”) and local (“AL”)

<sup>8</sup> Both national (“DN”) and local (“DP”)

- 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 should be of appropriate quality. 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 therefore proposed an amendment to the wording of this condition, to require recordings appropriately to reflect the quality of the content as it was originally broadcast.
- 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 proposed 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.

## **General provision of information to Ofcom and notifications to Ofcom**

- 4.16 The “general provision of information to Ofcom” licence condition 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. 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.
- 4.17 Ofcom proposed an expansion and clarification of the notification requirements. We proposed 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.
- 4.18 We proposed 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 AVMS Regulations, Ofcom is 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.

- 4.19 In all other licences, we did not propose to make any changes to part (1) of the "general provision of information to Ofcom" condition (part (2) for ADS-RSL licences).
- 4.20 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.
- 4.21 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 proposed to move these requirements to a new "notifications to Ofcom" licence condition.
- 4.22 We also proposed 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.
- 4.23 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

- 4.24 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.
- 4.25 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 and to DSPS licences.
- 4.26 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.

- 4.27 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 proposed 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 the consultation, we also noticed a cross referencing error in the relevant condition of the RLCS licence, which we proposed to correct.

### Interest on late payments

- 4.28 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 three per cent interest shall be accrued daily on any licence fees paid after the payment deadline given by Ofcom.
- 4.29 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 proposed to remove this condition from these licences.

### The language we use in licences

- 4.30 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](#).
- 4.31 Similarly, Ofcom seeks to promote diversity, inclusion and equality inside our organisation and in the wider sectors we regulate. We therefore proposed to use gender neutral language in our licences – for example, using ‘they/them/their’ instead of assuming the masculine.

### Definitions and interpretation

- 4.32 In the course of preparing this Statement, we noticed some out of date wording in the Definition of the “Code of Electronic Programme Guides”. The out of date wording is currently contained in TLCS, DTPS, PS-DTPS and DTAS licences and says:
- ~~4.33 “Code on Electronic Programme Guides” means the code giving guidance as to the practices to be followed in the provision of electronic programme guides as drawn up and from time to time revised by Ofcom in accordance with Section 310 of the Communications Act (and in the event that such code has not been drawn up by Ofcom or is not yet in force,~~

~~4.34 — “Code on Electronic Programme Guides” shall be interpreted to mean the Code of Conduct on Electronic Programme Guides drawn up by the Independent Television Commission and in force immediately before the commencement of Section 310 of the Communications Act, which code shall continue to have effect (notwithstanding the substitutions made by that section):-~~

~~(a) until the code drawn up by Ofcom under that section comes into force; but~~

~~(b) in relation to times before the coming into force of Ofcom’s code, as if references in the code to the Independent Television Commission were references to Ofcom)”~~

4.35 Given that Ofcom has drawn up a Code on Electronic Programme Guides, we consider the wording that we have struck-through above can be removed. As set out above, we have given licensees the opportunity to comment on this proposed change by giving notice of the proposal on our website on 4 November 2020. Depending on responses, we intend to include this change in the notices of amendments that we serve on licensees following this Statement.

## Summary of responses

4.36 Ofcom received eight responses to this section of our consultation.

4.37 Below we detail the responses we received along with our assessment of them and the conclusions that we have reached. We only set out the conditions that we received a response to – if we have not mentioned a condition below, we did not receive a response to the proposed changes and we will therefore implement the new licence conditions in the wording we proposed in the consultation.

4.38 In addition to the responses we set out below that were made in relation to the specific licence condition changes we proposed, John Lyons highlighted the importance of ‘balanced’ and ‘fair’ broadcasting, particularly in relation to news and/or information broadcasts, and suggested these words be included in licence conditions or Ofcom’s Strategy.

4.39 Broadcast licences don’t set out the specific standards that broadcasters must comply with in their programming – these standards are instead set out in the Broadcasting Codes. We consider that John Lyons’ comments are more related to what is being broadcast, and so would be most relevant to any future changes to the Broadcasting Codes, rather than the changes to the licence conditions themselves. We have passed the comments on to Ofcom’s team which has responsibility for setting and enforcing broadcasting standards.

4.40 A confidential respondent, [X], also suggested making more comprehensive changes to the wording of the licence conditions, and provided its own mark-up of a particular licence type. We have considered its suggestions and addressed them in this Statement when they have related to a change that we have proposed. As to its other proposed changes:

- a) It proposed changes to the term for which certain licence types are granted and to the way in which the character of the proposed service is defined. Both these are substantial changes in relation to which Ofcom would need to gather information and

consult. There is not time to do such work before the licence change notifications must go out in order to comply with the revised AVMSD and the Exit Regulations.

- b) Many of its proposals represented changes to wording in licence conditions that is derived directly from legislation. We did not consider that changes of this type would be appropriate, as they would introduce uncertainty as to whether the licence still complied with the legislation concerned.
  - c) A few of its proposals would have no effect on the meaning of the licence condition, and therefore we do not propose to accept them.
  - d) Finally, it made a number of proposals with a view to providing that a licensee need comply only with directions or instructions “duly” made or given by Ofcom, rather than with all directions or instructions given by Ofcom. As a public body, Ofcom is required to act in accordance with the general principles of public law, and our decisions may be overturned if, for example, they are irrational or procedurally unfair. The wording of the licence does not affect those duties. However, our decisions are binding unless a Court orders otherwise. The addition of the word “duly” might suggest otherwise to licensees and in particular, in some instances might be taken to imply incorrectly that a licensee that disputed the lawfulness of a direction was not required to comply with it. We therefore do not consider it appropriate to take these changes.
- 4.41 Finally, LG Electronics responded that country of destination regulation is to the detriment of UK consumers, that traditional definitions of EPGs are becoming inappropriate and the regulation proposed for them too onerous. It also noted that it is unhelpful that Ofcom cannot identify “Regulated EPGs” until the end of the transition period and that online services must not be required to be licensed like traditional broadcast services.
- 4.42 These comments all appear to relate to the regulatory framework for broadcasting itself, which exists as a result of legislation made by Parliament and the Secretary of State, and which Ofcom has no power to change.

## Force majeure

### Responses received

- 4.43 We proposed to remove the wording from the force majeure licence condition that sets out that a licensee’s responsibility for breaching a condition should be removed where there has been an accident or breakdown of equipment or apparatus and replace it with a reasonableness requirement.
- 4.44 A confidential respondent highlighted the importance of Ofcom not considering it to be licence breach in the event of a genuine equipment failure, or arising from matters outside of the licensee’s control, and the consequences that the proposed changes could have on third-party contractors. [X]
- 4.45 Maxxwave responded and highlighted the cost of backup equipment for transmission services – which may be prohibitively expensive for some broadcasters. It suggested Ofcom

could consider service availability over a set period such as a year, to determine a level of outage each year that might be reasonable.

- 4.46 Maxxwave also suggested that in the event of equipment failure, leniency should be given where a broadcaster finds it necessary to operate with reduced parameters if, for example, they are waiting for supplies. It noted that broadcasters will have some outages during their licensed period and that it would be necessary to distinguish broadcasters who are not interested in restoring service in a timely manner and those who are genuinely having difficulties or reasonable failures.
- 4.47 Maxxwave recommended that broadcasters keep a logbook detailing off-air periods, the reasons for these, the duration and any remedial action taken in order to help Ofcom determine if a fault was reasonable and if a broadcaster acted responsibly in putting it right.
- 4.48 A second confidential respondent suggested adding a further scenario to the events where the Licensee would not be held responsible for failure to comply with the Conditions of the Licence. [§<]
- 4.49 Maxxwave further noted that Ofcom have accepted that the force majeure licence condition is engaged to protect broadcasters who were unable to meet their programming commitments set out in their licences due to factors related to the spread of the Coronavirus (Covid-19).
- 4.50 It said that, given Covid-19 will be with us for some time, it feels it is unreasonable to continue to apply the force majeure condition to licensees and where a licensee is unlikely to be able to return to providing a service in line with its licence obligations under Covid-19 conditions, it said it should be considered for enforcement action (including a sanction such as a revocation). It suggested that a licence could then be re-advertised so that the original licensee could reapply under more favourable terms, but it would also allow other groups in the area (those who are, or would be able to, provide a compliant service in spite of Covid-19 conditions) the opportunity to provide a service.

#### **Ofcom's assessment and conclusion**

- 4.51 Ofcom's proposal was to do two things. The first was to say that the words "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 control of the Licensee" should be subject to a reasonableness test, because otherwise any failure which was outside the Licensee's control because the Licensee failed to foresee it or plan for it would not amount to a licence breach. We expect this change to have little to no impact on most licensees or their contractors because as a matter of sound business practice they are likely to be taking reasonable steps to plan for such events anyway.
- 4.52 The second part of the proposed change was to delete from the condition one of the examples of situations in which circumstances might be outside a Licensee's control: that is, "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)". The effect of these

words is that any equipment breakdown is a force majeure situation unless the equipment failure itself can be shown to have been caused by a *wrongful* act, neglect or default, not merely an act, neglect or default, and even if it would be reasonable to expect the Licensee to have made contingency plans to prevent such a failure of that piece of equipment from causing a licence condition breach. We do not consider that this is consistent with our fulfilment of our statutory duties.

- 4.53 By proposing to remove the wording that we have identified, we were and are not suggesting that licensees would always be held responsible for a breach of the licence caused by any accident or breakdown of equipment or apparatus. Instead, we would have regard to the individual circumstances to determine if the licensee's conduct had been reasonable.
- 4.54 We therefore do not accept that the change will have significant unforeseen consequences for the sector, or impose significant costs on it. The vast majority of our licensees do succeed in complying with licence conditions involving equipment, which in our view is good evidence that they mostly are currently taking reasonable steps. However, in the rare cases where a licensee does not currently take reasonable steps, we consider it appropriate for there to be an obligation that it should do so. For example, if a licensee suffered a breakdown of transmission equipment leading to its service going off air, and it had contingency plans and procedures in place so that it could demonstrate to Ofcom that it got the service back on air as soon as it reasonably could, we would be very likely to consider the force majeure condition engaged. What was reasonable would depend on the individual circumstances of each case.
- 4.55 We note the additional wording suggested by the second confidential respondent. We consider that the scenario it described is already encompassed in the wording of the licence condition we proposed. Whilst the condition gives specific scenarios, the wording "without limitation" makes clear that the condition could be engaged in other scenarios, and it has been used as such. For example, our [note to broadcasters](#) published on 23 March 2020 stated: "*for the next three months, where broadcasters are genuinely unable to continue to meet the programming and production requirements set out in their licence as a result of the disruption due to Covid-19, we would consider the force majeure condition in the licence to be engaged*".
- 4.56 We have also noted Maxxwave's suggestions about Covid-19 no longer amounting to a force majeure situation.
- 4.57 We were consulting on the wording of our licence conditions rather than on our approach to enforcement, which we keep under review at all times. The example was given to illustrate how the force majeure clause has been relevant in the recent past. Maxxwave's comments have been passed to our enforcement team.

## Retention and production of recordings

### Responses received

- 4.58 We proposed to add that recordings should be retained and produced in broadcast quality, to ensure that we are able to assess recordings of them against our Broadcasting Code.
- 4.59 Sky responded to agree that copies of recordings provided to Ofcom by licensees should be of sufficient quality to enable Ofcom to assess a complaint. However, it said that the proposed wording could risk imposing unnecessarily burdensome regulation. It said it was unclear what Ofcom intends “broadcast quality” to mean. Sky suggested “broadcast quality” should instead mean “sufficient quality to allow Ofcom to make an adjudication”.
- 4.60 Maxxwave noted that “broadcast quality” could be interpreted as high bitrate, or uncompressed, and that broadcasters may need to retain recordings at a different quality than they are broadcasting. It considered that retaining recordings to this quality would be excessively burdensome on licensees/their agents, as it would require a considerable increase in storage capacity. It also noted challenges with providing recordings to Ofcom in a file size that we would accept. It suggested a technical solution – that recordings should be retained at CCIR “Grade 4”. (This is a methodology for the subjective assessment of quality set by the International Telecommunication Union).
- 4.61 Comux replied and raised concerns that the requirement to provide recordings in broadcast quality could be prohibitively expensive. It explained it would require it to commission a replacement system with significantly increased storage capacity, at considerable cost.
- 4.62 Two confidential respondents also raised concerns about the impact of the proposed change in terms of cost. [REDACTED]
- 4.63 We also proposed to change the licence condition so that EPG providers may retain the information contained in the EPG in a form other than in ‘sounds and vision’ as is currently required by the licence.
- 4.64 One respondent, who asked for their name to be kept confidential, [REDACTED], said that the changes proposed by Ofcom to the requirements on EPG providers in the condition did not appear to have been carried through consistently throughout the condition. In particular, it said that part (2)(a) still referred to recordings in sound and vision and part 2(c) referred to scripts and transcripts of programmes.

### Ofcom’s assessment and conclusion

- 4.65 We have noted the feedback from Sky, Maxxwave and Comux about the additional regulatory burden our proposed wording may lead to. And we also recognise that if the proposed wording was interpreted as meaning licensees or their agents needed to retain higher quality, larger files than they are currently storing, this may result in additional costs being incurred by licensees or their agents. This is something that we want to avoid if it is possible to achieve the same regulatory aim in a different way.

- 4.66 Because of this, we have decided to not specify in the “retention and production of recordings” condition that recordings provided to Ofcom by licensees should be “in broadcast quality”.
- 4.67 However, for the avoidance of doubt, Ofcom expects any recordings provided to us by licensees to be clearly visible, audible and legible.
- 4.68 We also recognise that the changes proposed to the “retention and production of recordings” condition in relation to the requirements on EPG providers were not reflected in part (2) of the condition. Ofcom’s intention is to remove any requirement on EPG providers to produce recordings in sound and vision to Ofcom and instead enable EPG providers to provide information contained in the EPG to Ofcom in human-readable form.
- 4.69 Therefore, we intend to make this clear by reflecting our amendments in parts 2(a) and 2(b) of the condition. We do not, however, consider it necessary to amend part 2(c) of the condition. This is because part (2)(c) makes clear that the requirement is only applicable if programmes are included in the licensed service, which would not be the case if the service is an EPG.
- 4.70 The amendments which will be made to Part (2) of the condition included in all TLCS, L-DTPS, PS-DTPS, DTPS, DTAS, DRS and RTSL-E licences are set out below, with the new additions **in bold**:
- (2) In particular, the Licensee shall:*
- a) make and retain or arrange for the retention of a recording in sound and vision of every programme included in the Licensed Service for a period of [XX] days from the date of its inclusion therein. **If the Licensed Service is an EPG, it may instead make and retain or arrange for the retention of the information contained in the EPG in human-readable form for the same period; and***
  - b) at the request of Ofcom forthwith produce to Ofcom any such recording **or information** for examination or reproduction; and*
  - c) at the request of Ofcom forthwith produce to Ofcom any script or transcript of a programme included in the Licensed Service which they are able to produce to it.*
- 4.71 No changes will be made to Part (2) of the condition included in ASPS, CR, DSPS, AS, DAS, RLCS, LRSL, SRSL and ADS-RSL licences.

## General provision of information to Ofcom

### Responses received

- 4.72 A confidential respondent suggested making a change to the wording of the condition contained in some licence types in relation to the attribution of multiplex revenue to licensees. [X] suggested removing “half yearly” from the condition, so that it would read (removal struck through) “*The Licensee shall furnish to Ofcom ... ~~half-yearly~~ income and expenditure returns...*”.

### Ofcom's assessment and conclusion

- 4.73 We have decided to remove "half yearly" from the condition that is contained in the DTPS, PS-DTPS, L-DTPS and DTAS licences so that it would read "*The Licensee shall furnish to Ofcom ... income and expenditure returns...*". We consider that this change will not prevent us from complying with the requirements of Section 15 of the 1996 Act in order to attribute multiplex revenue.

## Revocation

### Responses received

- 4.74 A confidential respondent, [X], suggested adding the word 'duly' into the condition, so that it would read: "*If Ofcom is **duly** satisfied that the Licensee is failing to comply with any Conditions of the Licence or with any direction given by Ofcom ...*"

### Ofcom's assessment and conclusion

- 4.75 We consider that adding the suggested word 'duly' would serve no purpose but would risk confusing licensees. As a public body, Ofcom is required to act in accordance with the general principles of public law, and our decisions may be overturned if, for example, they are irrational or procedurally unfair. The wording of the licence does not affect those duties. However our decisions are binding unless a Court orders otherwise. The addition of the word "duly" might suggest otherwise to licensees.

## Our decision

- 4.76 We have decided to add a reasonableness requirement into the "force majeure" licence condition, and to remove the wording relating to accident or breakdown of equipment or apparatus.
- 4.77 We have decided to update the "retention and production of recordings licence" condition to ensure the condition applies regardless of whether Ofcom has received a standards complaint, and is fit for purpose in cases where the licensee is an EPG provider. We are not requiring that recordings be kept of "broadcast quality".
- 4.78 We have decided to move the requirements in the "provision of information relating to/following a change of control" condition into a new "notifications to Ofcom" condition, and amend the wording of the current condition to make sure it applies in all cases;
- 4.79 We have decided 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".
- 4.80 We have decided to remove the requirement in the "general provision of information to Ofcom" condition contained in DTPS, PS-DTPS, L-DTPS and DTAS specifying that income and expenditure returns should be half yearly.

- 4.81 We have decided the new “notifications to Ofcom” 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.
- 4.82 We have decided to add a provision to the “revocation” licence condition in ASPS, CR, DSPS, AS, LRSL, SRSL and ADS-RSL licences to reflect Ofcom’s power to suspend these licence types when imposing a sanction.
- 4.83 We have decided to remove the licence condition “interest on late payments” from broadcast licences.
- 4.84 We have decided to use gender neutral language in our broadcast licences.
- 4.85 We consider that the impact in terms of cost of all the changes above is small, and more than justified by the benefits in terms of enforceability of the regulatory regime, clarity and modernity of drafting.

## 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
	Advertising and sponsorship standards and requirements	8	8	12	8	7	16	6
	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)	DA S	AS	RLC S	LRS L	SRS L	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
	Advertising and sponsorship [standards and requirements]	7	6	6	6	6	6	7	6	6	6	6
	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
	Advertising and sponsorship standards and requirements	n/a	n/a	n/a	n/a
	Revocation	23	24	30	24
	Interest on late payments	21	22	28	22