



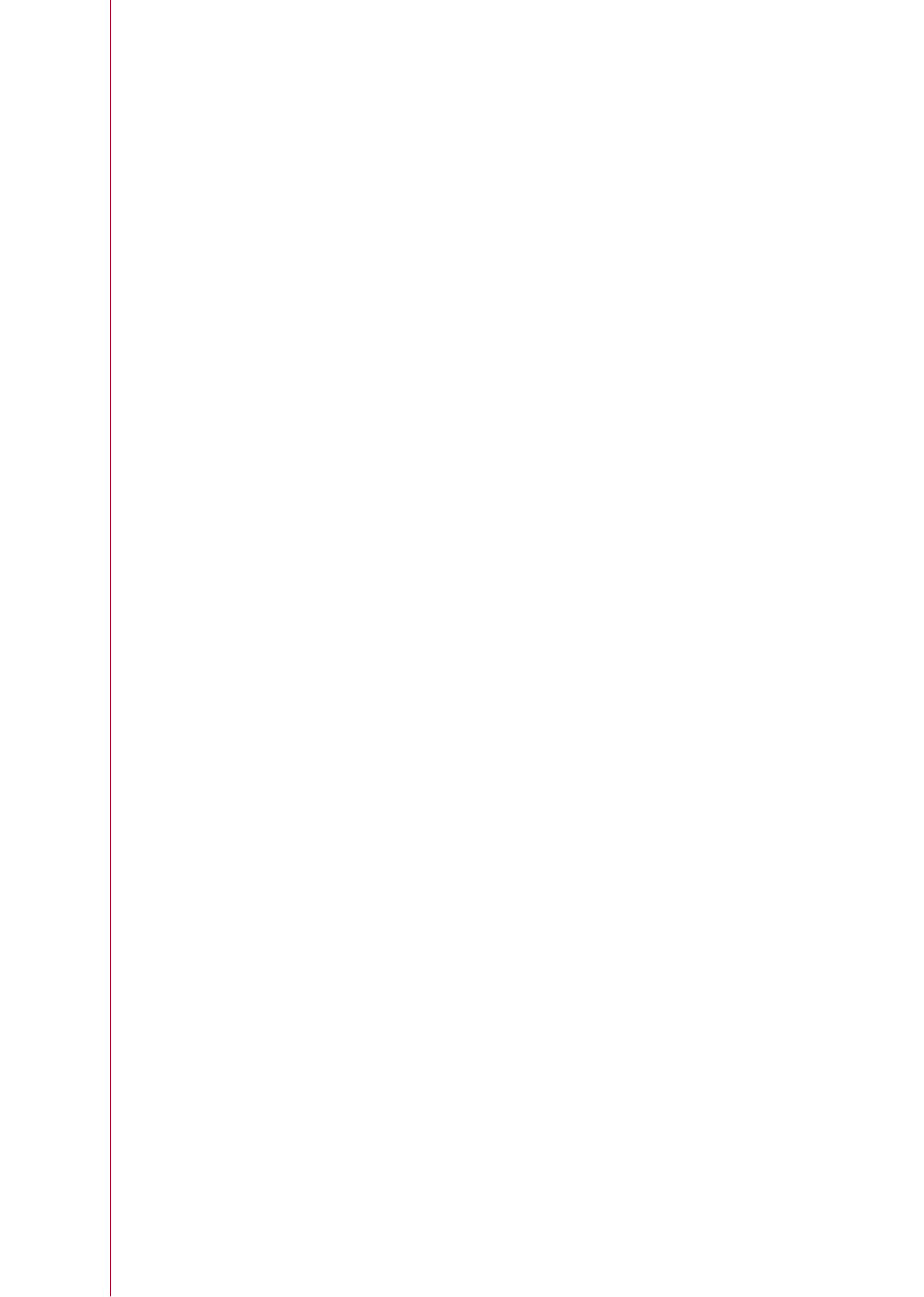
## *Invitation to Apply for an L-DTPS Licence*

### *Phase 1 Locations*

*Belfast, Birmingham, Brighton & Hove,  
Bristol, Cardiff, Edinburgh, Glasgow,  
Grimsby, Leeds, Liverpool, London,  
Manchester, Newcastle, Norwich,  
Nottingham, Oxford, Plymouth, Preston,  
Sheffield, Southampton and Swansea*

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## Section 1

# L-DTPS licences – Invitation to Apply

- 1.1 With this document and in accordance with Section 18(1) of the Broadcasting Act 1996, as amended and modified by the Local Digital Television Programme Services Order 2012, we are publishing this Notice inviting applications for local digital television programme service ('L-DTPS') licences for each of the following 21 locations: Belfast, Birmingham, Brighton & Hove, Bristol, Cardiff, Edinburgh, Glasgow, Grimsby, Leeds, Liverpool, London, Manchester, Newcastle, Norwich, Nottingham, Oxford, Plymouth, Preston, Sheffield, Southampton and Swansea. There is only one licence for each location.
- 1.2 An L-DTPS will have sufficient capacity at its location for one standard definition digital television service on the local multiplex service, the licence for which is being advertised concurrently with these L-DTPS licences.
- 1.3 The deadline for applications for each licence is 5pm on Monday 13 August 2012.
- 1.4 This document sets out the licensing process for applicants, including information on the main statutory requirements, licence conditions that have to be met, and the proposed timetable for licence award. It also includes guidance on applying for licences.
- 1.5 Applicants must complete an *Application Form*. This is available on the Ofcom website at <http://licensing.ofcom.org.uk/tv-broadcast-licences/local/apply>. It should be completed electronically and emailed to [local.tv@ofcom.org.uk](mailto:local.tv@ofcom.org.uk) by the closing date. Applicants wishing to apply for more than one licence must complete a separate application form for each L-DTPS licence.
- 1.6 Each application form should be accompanied by the payment of the application fee of £2,500 which should be made by either BACS or CHAPS into the Ofcom bank account. Further details on payment can be found at 2.21, below.
- 1.7 Ofcom's Statement on *Licensing Local Television*,<sup>1</sup> published alongside this *Invitation to Apply*, sets out the broad approach that will be taken to licensing L-DTPSs, and addresses responses that stakeholders have made to our consultation on this matter. The necessary information for applying for an L-DTPS licence, however, is in this *Invitation to Apply* ('ITA') and the *Application Form*.
- 1.8 Other supporting information may be found in other publications by Ofcom and other parties, web links for which are given in this document. For example, the Ofcom Broadcasting Code<sup>2</sup> and associated guidance; the Advertising Standards Authority's Code; etc.
- 1.9 The statutory framework for awarding L-DTPS licences, and the obligations to be met by licensees, are set out in the Broadcasting Act 1990 (the '1990 Act'), the Broadcasting Act 1996 (the '1996 Act'), and the Communications Act 2003 (the '2003

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/consultations/local-tv/>

<sup>2</sup> This is referred to as the 'Standards Code' in the L-DTPS licence and definitions.

Act') as modified by the Local Digital Television Programme Services Order 2012 ('s.244 Order').<sup>3</sup>

- 1.10 Ofcom reserves the right to alter or correct any part of this Invitation To Apply ('ITA') at any stage before the closing date for applications. Any additional documents referred to in this ITA may also be amended from time to time. Any such alterations, corrections or supplementary information will be made available on our website ([www.ofcom.org.uk](http://www.ofcom.org.uk)).
- 1.11 The information given in this ITA is not an exhaustive account of the statutory and licensing requirements and should not be regarded as a complete and authoritative statement of the law. Nor does any information we issue, whether in this ITA or elsewhere, imply any judgement by us as to commercial prospects for the applications, or that licensed services will be profitable. Applicants should take their own legal advice on all the information contained within this document.

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<sup>3</sup> [http://www.legislation.gov.uk/uksi/2012/292/pdfs/ukxi\\_20120292\\_en.pdf](http://www.legislation.gov.uk/uksi/2012/292/pdfs/ukxi_20120292_en.pdf)

## Section 2

# The licensing process

- 2.1 This section sets out the application and award process, along with guidance on what we expect to be included as part of an L-DTPS licence application. An L-DTPS licence allows the holder to broadcast a local television service on DTT via the local multiplex in the specified location and carries with it the obligations set out in the licence and accompanying Ofcom codes.
- 2.2 We also describe here the licence requirements that do not relate directly to content. For content requirements see Section 3 of this document.
- 2.3 Information about other platforms and types of licence is also included here, as well as information on position and prominence on Electronic Programme Guides (EPG).

## Locations and predicted coverage

- 2.4 We are inviting applications at this time for licences for each of the following 21 locations: Belfast, Birmingham, Brighton & Hove, Bristol, Cardiff, Edinburgh, Glasgow, Grimsby, Leeds, Liverpool, London, Manchester, Newcastle, Norwich, Nottingham, Oxford, Plymouth, Preston, Sheffield, Southampton and Swansea.
- 2.5 For each of these locations we are (through the minimum coverage requirement of the local multiplex licence) defining an area with a specified minimum level of DTT coverage. We have named each location after the principal conurbation within that area.
- 2.6 The minimum coverage for each of these locations is specified by the *Coverage Note* published alongside the *Invitation to Apply for a Local Multiplex Licence*. The *Coverage Note* can be found here: <http://licensing.ofcom.org.uk/tv-broadcast-licences/local/>.
- 2.7 L-DTPS licence applicants should refer to Annex 1 of the *Coverage Note* for maps giving the indicative coverage using QPSK rate 2/3, and should refer to Annex 2 for indicative household coverage figures using three different transmission modes. Table 1 also sets out the indicative coverage for all Phase 1 and Phase 2 locations using QPSK rate 3/4.
- 2.8 Applicants for the L-DTPS licence for each location should note that the predicted coverage maps are modelled using QPSK rate 2/3. However, we are recommending in our *Statement* that the successful local multiplex licensee should use QPSK rate 3/4, which could result in a small reduction in coverage. The modelling of the household coverage figures indicates that any reduction would be small and applicants can still assume coverage broadly equivalent to that predicted in Annex 1 of the *Coverage Note* when drafting their applications.
- 2.9 The processes by which the local multiplex licensee and the L-DTPS licensee can negotiate changes in coverage at each location are set out at 5.20 following; but these discussions will necessarily take place after licence award, so the licence application process must be based on the specified minimum coverage.

## Definition of editorial area

- 2.10 The predicted coverage of a service is a consequence of frequency availability, technical assumptions, and other factors such as topography. There will be only one L-DTPS licensed in each location.
- 2.11 Applicants may choose to target their editorial content at a sub-set of this coverage area, for example, where that part of the area has a particularly strong and coherent character separate from the rest of the coverage area. There may be more than one coherent editorial area within the DTT coverage area which the service could target.
- 2.12 Where an applicant is not planning to target the whole of the coverage area, they should explain in the application form why they have selected a particular sub-set of the coverage area.
- 2.13 Ofcom will assess applications based on their plans to serve the editorial area(s) they specify.
- 2.14 Where competing applicants propose to serve different editorial areas within a predicted coverage area, Ofcom will consider each application on its merits including, but not limited to, the size of the population in the proposed editorial area and the benefits to those viewers.

## Application process

### Submission of applications

- 2.15 Applicants must complete a separate *Application Form* for each L-DTPS licence they wish to apply for. The *Application Form* can be found at: <http://licensing.ofcom.org.uk/tv-broadcast-licences/local/apply>.
- 2.16 Applicants must comply with all the requirements set out in this document and the *Application Form*. Failure to do so may render the application liable to disqualification without refund of the application fee.
- 2.17 One electronic copy of the completed application form, along with supporting documentation also in electronic format,<sup>4</sup> must be submitted to Ofcom via email to [local.tv@ofcom.org.uk](mailto:local.tv@ofcom.org.uk), no later than 5pm on the closing date.
- 2.18 Applications received after the closing date will not normally be accepted and applicants should bear in mind that email may be unreliable. Therefore applicants are strongly advised to submit applications at least 48 hours in advance of the deadline. Further, applicants should note that files over 15 MB may not be received and should plan their submissions accordingly. We will confirm receipt of applications by email reply.
- 2.19 If there is a difficulty with submitting applications electronically, applicants should contact [local.tv@ofcom.org.uk](mailto:local.tv@ofcom.org.uk) to enquire about alternative ways of submitting, but we would consider these only in exceptional and justified circumstances.
- 2.20 Each application must be accompanied by a non-refundable fee of £2,500, which must be received (Ofcom must be holding cleared funds) by the closing date. We

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<sup>4</sup> Word document or RTF files are acceptable.

advise applicants to submit their payment in advance of the closing date, whether paying by BACS or CHAPS.

2.21 Applicants may submit their payment by either of the following methods:

- Payment by BACS into the Ofcom bank account (sort code: 30-97-90; account number: 00782415; account name: Ofcom). Please note that any payments made using this method may take at least three working days to reach the account.
- Payment by CHAPS into the Ofcom bank account (details as above). Please note that, although this is a 'same day' payment method, applicants intending to submit their payment on the closing date itself should confirm with their bank the deadline for ensuring that we receive payment on that date.

2.22 In either case, applicants must put a reference in the transfer consisting of

“LTV [Location the licence is for] [Name of applying entity]”

This reference, and the account the transfer is coming from, should be specified on the *Application Form*.

2.23 The application fee is not refundable under any circumstances.

2.24 Payment in cash, by cheque, or by any other means is not accepted.

### **Contingent applications**

2.25 The award of each L-DTPS licence must be considered independently, with applications for the licence assessed against the statutory criteria, and judged against other applications for the same licence.

2.26 Applicants may apply for more than one L-DTPS licence. Those wishing to apply for more than one licence must submit a separate application form – including a separate application fee – for each licence.

2.27 Applications for an L-DTPS licence cannot be contingent upon the outcome of another L-DTPS licence award.

2.28 If awarded an L-DTPS licence, the applicant must be prepared to launch the proposed service as a stand-alone business, regardless of how it might have operated differently were the applicant to hold multiple licences.

### **The applying entity**

2.29 Applications must be made in the name of a single legal entity that is capable of holding a broadcasting licence. This must be a body corporate, and in most cases will be a (registered) company, although it can also include, for example, some bodies created by statute. An individual or a registered charity on its own is not a body corporate.

2.30 Where an applicant is a company, its company registration number must be included on the application form. If the application is successful, Ofcom will award the licence to the body corporate named in the application.

## Completing the application form

- 2.31 Applicants should aim to keep their answers concise and to the point.
- 2.32 Some sections contain word limits and any information beyond the word limit will not usually be considered.
- 2.33 Applicants may request that some parts of an application be submitted in confidence. The sections that may be in confidence are marked on the application form. This is because applications are published on the Ofcom website. Applicants are asked to tick the relevant box on the application form if they wish to request that the section be removed from the published copy of the application.
- 2.34 Where an applicant asks us to keep information confidential, we will treat this request seriously and will try to respect it. However, Ofcom may need to publish all applications, including parts that are marked as confidential, in order to meet legal obligations.
- 2.35 If an applicant wishes to submit further information in confidence other than where this is specifically indicated as permissible, confirmation that this is acceptable must be sought beforehand, by email, from Ofcom's Local TV Licensing team ([local.tv@ofcom.org.uk](mailto:local.tv@ofcom.org.uk)).
- 2.36 All information provided on the application must be true and correct. If any amendments need to be made by any applicant due to circumstances outside its control, then Ofcom should be informed immediately. No material amendments to the proposals provided in the application may be made by the applicant without the agreement of Ofcom. Ofcom will not agree to any such amendment which it considers would be unfair to any other applicant applying for an L-DTPS licence at that time.
- 2.37 Submission of an application will be taken as evidence of willingness to accept a licence, if offered, on the terms indicated.
- 2.38 Any queries on the L-DTPS licence application process should be directed to [local.tv@ofcom.org.uk](mailto:local.tv@ofcom.org.uk).

## Timetable for licence award

- 2.39 Ofcom will aim to assess and award licences as quickly as practically possible after the closing date for applications. The duration of this period is subject to the volume and complexity of applications.
- 2.40 The anticipated timetable for award and commencement of the local multiplex and L-DTPS licences is set out in Figure 1 below.
- 2.41 Ofcom will assess applications based on the proposals presented in the completed applications, and may seek clarification and/or amplification of proposals from an applicant.
- 2.42 Licence awards will be decided by a Broadcast Licensing Committee, which will have authority to award licences delegated from the main Ofcom board.
- 2.43 Applications, with any confidential information redacted, will be published on the Ofcom website soon after the closing date.

- 2.44 All decisions by the Broadcast Licensing Committee and the reasons for those decisions will be published on our website.
- 2.45 Successful applicants will be notified of Ofcom's decision to award a licence in writing. It should be noted that licence award is not the formal beginning of the licence, rather it is Ofcom's decision about which of the applicants should hold the licence.

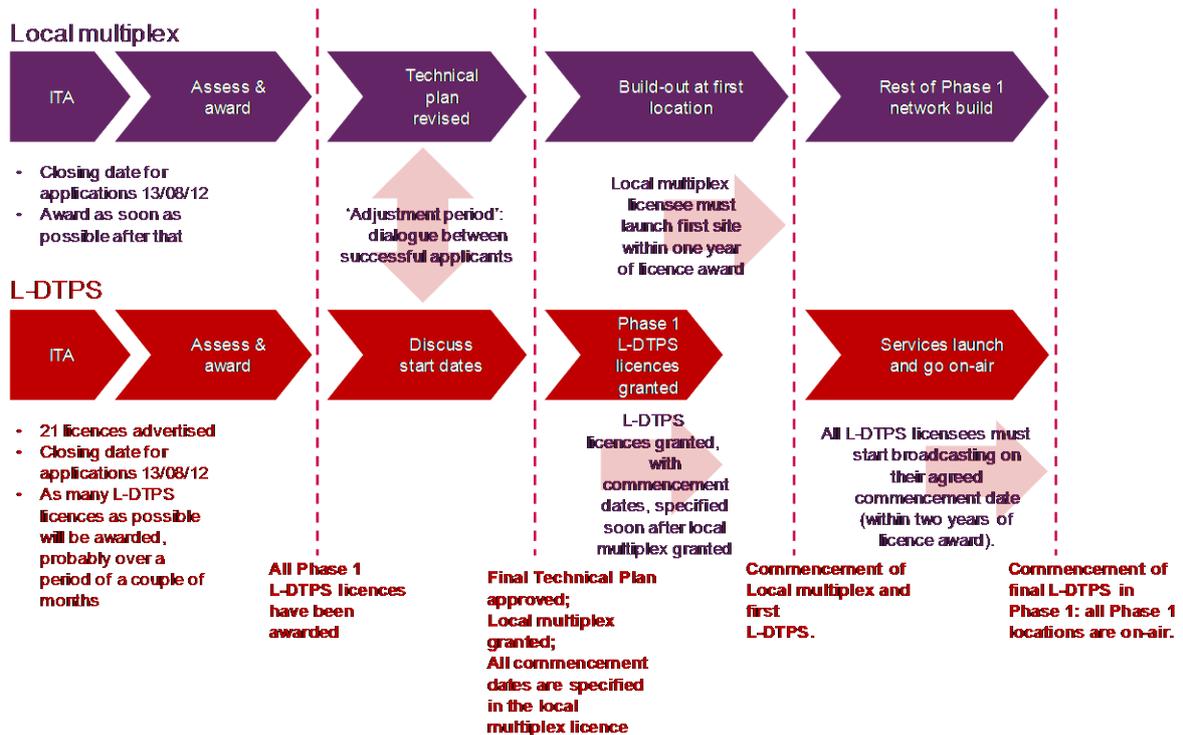
**Licence start date and duration**

- 2.46 Ofcom will prepare a licence for each licence awarded. This will be signed by Ofcom and issued to the licensee. This is referred to as 'granting'.
- 2.47 However, the term of a licence only begins when the L-DTPS licensee commences broadcasting their service. This is referred to as the 'commencement date'.
- 2.48 Ofcom will aim to grant L-DTPS licences as soon as practically possible after licence award. At the point of granting, each licence will specify a commencement date and the licence conditions will come into force on this commencement date.
- 2.49 All successful L-DTPS licence applicants will be expected to launch within two years of L-DTPS licence award, unless build-out has not been completed by the successful local multiplex licensee, or unless Ofcom gives permission for a later launch due to unforeseen circumstances.
- 2.50 In the event that an L-DTPS fails to launch within this timeframe, Ofcom may seek to re-advertise the licence.
- 2.51 Applicants are asked to propose in their application a realistic launch date within this two-year window. This is an indication of the applicant's preferred timetable. Applicants for the local multiplex licence are asked to submit a technical plan with a launch date for each location. After the local multiplex licence is awarded, there will be a period of adjustment, in which dialogue will be encouraged between the L-DTPS licensees and the local multiplex licensee, with a view to adjusting the dates in the technical plan to take account of L-DTPS licence applicants' preferred launch dates.
- 2.52 If a launch date is agreed between the successful L-DTPS applicant and the successful local multiplex applicant during the adjustment period, then that will be the commencement date of the L-DTPS licence. Otherwise, the commencement date in each L-DTPS licence will be the later of:
  - 2.52.1 the launch date for the local site, in the final Technical Plan approved by Ofcom; or
  - 2.52.2 the launch date proposed by the L-DTPS applicant in their licence application.
- 2.53 No L-DTPS licensee will be required to launch their service before the commencement date specified in their application form, unless they have agreed another commencement date with the local multiplex licensee.
- 2.54 Applicants should be aware that an L-DTPS licence requires the service to broadcast, rather than simply allowing it to do so. Therefore, any service that fails to broadcast on the local multiplex, when the local multiplex service is available, while

licensed will be in breach of its licence and will be subject to sanctions including revocation.

- 2.55 We are awarding the local multiplex licence for the 12 years permitted by the s.244 Order, and all L-DTPS licences will be coterminous with this licence. Therefore, the exact duration of each L-DTPS licence will depend on when it commences, in relation to the time that the local multiplex licence entered into force.

**Figure 1: Timetable for award and commencement of the local multiplex and L-DTPS licences**



## Licensee requirements

### Control of service

- 2.56 An L-DTPS licence should be held by the entity which legally will be deemed the provider of the service: the person ‘with general control over which programmes and other services and facilities are comprised in the service (whether or not he has control of the content of individual programmes or of the broadcasting or distribution of the service)’.<sup>5</sup>
- 2.57 The capacity on the local multiplex which is reserved for the L-DTPS at each location may not be sublet or assigned by the L-DTPS licensee to another party, or used for anything other than the licensed L-DTPS. However, the L-DTPS may include material produced by third parties (e.g. independently produced or networked content), so long as the L-DTPS licensee retains editorial control of the broadcast service.

### Fit and proper persons

- 2.58 Under the 1990 Act, Ofcom cannot issue a licence to someone who it considers not to be a ‘fit and proper’ person. As the term ‘fit and proper’ is not defined in the 1990

<sup>5</sup> See <http://licensing.ofcom.org.uk/binaries/tv/service-provider.pdf>.

Act, it is a matter for Ofcom's discretion as to whether it regards a person as not fit and proper to hold a licence. Ofcom will offer a person whom it is suggested is unfit and/or improper a full opportunity to present his or her case.

### **Prohibited persons**

- 2.59 There are no specific prohibitions in the s.244 Order on who can hold an L-DTPS licence.
- 2.60 The prohibitions that generally apply in broadcasting also apply to L-DTPS licensees. The following are disqualified from holding a licence or controlling a licensee:
- 2.60.1 a local authority (other than in specific circumstances);
  - 2.60.2 a political body;
  - 2.60.3 a religious body (except by specific Ofcom determination);
  - 2.60.4 an advertising agency or a company controlled by one.
- 2.61 In particular, there are no restrictions on other local media companies holding an L-DTPS licence.<sup>6</sup>
- 2.62 There is also nothing to prohibit consortia from holding an L-DTPS licence as long as the licence can be awarded to a single body corporate.

### **Independent producers**

- 2.63 Currently there are restrictions on independent producers which prevent them from holding an L-DTPS licence without losing their independent producer status for the purposes of the independent production quotas applied to television. An independent producer may not have more than a 25% share of a body holding a broadcast licence. This includes L-DTPS licences.
- 2.64 We note the Government's ambition is to have made the necessary changes to the statute ahead of our formal licensing process ending so that independent producers may choose to participate in the process for an L-DTPS licence, and potentially be awarded a licence, without forfeiting their independent status.
- 2.65 Until such a time as this legislation is amended, independent producers will have to comply with the existing ownership restrictions.

### **Localness requirement**

- 2.66 L-DTPS licensees are required, in usual circumstances, to have the studio from which the service will be broadcast, and/or the main production base, within the licensed coverage area. Should any licensee hold licences for multiple locations, they will be required to have a studio and/or main production base within each of their licensed coverage areas.

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<sup>6</sup> The Media Ownership (Radio and Cross Media) Order 2011, which removed all local cross-media ownership rules, came into effect on 15 June 2011. See <http://www.legislation.gov.uk/ukxi/2011/1503/contents/made>.

- 2.67 Ofcom is open to representations from organisations making the case otherwise and may be prepared to enter into written agreement to exempt L-DTPS licensees from this requirement in the particular circumstances of the case.
- 2.68 The next section of this document goes into more detail about what else the applicant needs to consider in relation to localness.

### **Promotion of equal opportunities and training**

- 2.69 If the licensee (and any other companies within the same group) has more than 20 employees, then Ofcom has an obligation under the 2003 Act to require it to make arrangements to promote equal opportunities and training, and to report annually. However, the Government has announced its intention to examine the framework surrounding our duties to promote training and equal opportunities in the broadcasting sector. At this time, no specific changes to the existing regime have been made and accordingly these obligations would apply to L-DTPS licence holders. Nevertheless, it remains possible that this requirement will have ceased to apply before L-DTPS licences commence.

## **Other licences and EPG prominence**

### **Other licences and platforms**

- 2.70 An L-DTPS licence is a licence to broadcast on DTT only, via the local television multiplex. If any licensees should wish to broadcast on satellite, cable and/or the internet, they will need another type of licence.
- 2.71 For these platforms, the appropriate licence is a Television Content Licensable Service (TLCS) licence. This is awarded on a non-competitive basis to any applicant that satisfies the eligibility criteria. It carries an application fee of £2,500 per application.
- 2.72 If any L-DTPS licensee wishes to operate a Video On Demand (VOD) service, they should notify the Authority for Television on Demand (ATVOD), which co-regulates these types of service. There is a notification fee associated with this, but it is possible that L-DTPS licensees will be exempt from all but the minimum fees on the basis of the nature of service or their relevant turnover. For more information, refer to ATVOD ([www.atvod.co.uk](http://www.atvod.co.uk)).

### **EPG prominence**

- 2.73 The Code of Practice for Electronic Programme Guides (Addition of a Programme Service) Order 2011 ('s.310 Order') grants L-DTPSs the status of Public Service Broadcast (PSB) channels, and therefore requires that these services are granted 'appropriate prominence' on Electronic Programme Guides ('EPG').
- 2.74 Ofcom has written to the main EPG providers asking for clarity on their proposed policy for listing of local TV services that, when licensed, will be subject to section 310.
- 2.75 The responses received from the main EPG providers have been published alongside the *Statement*.<sup>7</sup> These responses are summarised below.

<sup>7</sup> <http://stakeholders.ofcom.org.uk/consultations/local-tv/>

- 2.76 BSkyB ("Sky") operates the Sky satellite TV platform. To facilitate the provision of local TV services on its platform, Sky's response states that local TV channels will need to be regionalised before obtaining a listing in the Sky EPG. Thereafter, Sky intends that a local TV channel in each relevant Sky "region" will be allocated the first available channel number in the relevant genre (which Sky assumes, for at least some of the launched local TV services, will be the Entertainment genre). Sky has reserved channel numbers 117 (for UK regions other than Wales) and 134 (for Wales) for this purpose as well as three additional channel numbers at the end of the Entertainment genre in the event of a second, third and fourth local TV channel launch in any given region. Sky also intends to make changes to its Sky+ HD EPG to make local TV services accessible from the 'yellow button' on the front page. The yellow button will launch a 'quick-link' menu containing links to the available local TV channels and On Demand content within Sky's Anytime+ service. The Sky+ HD EPG is available in excess of six million Sky households.
- 2.77 Virgin Media operates the UK's main cable TV platform. Virgin Media's response states that Virgin Media has had tentative discussions with a number of potential local TV operators. On the basis of these discussions Virgin Media considers it would be preferable to deliver a combined linear, Video on Demand (VOD) and text service as an application via internet protocol on its TiVo platform. The TiVo platform is available in approximately 677,000 Virgin Media households. The application would be reserved a position on the first page of the TiVo applications page. Virgin Media's understanding to date has been that local TV services could be classified as news which would allow for the TiVo application also to be accessed via a link from the EPG within the news section in a currently unallocated slot close to the BBC News channel. Virgin Media will continue its discussions with interested parties and will keep the position under review as such discussions progress.
- 2.78 Freesat operates the Freesat satellite TV platform. Freesat's response states it is not presently in active discussions with local TV services, and its response is therefore on a hypothetical basis. Freesat would allocate linear Local TV services an appropriate position on the EPG subject to availability in a suitable genre and to Freesat's EPG Listing Policy. Freesat anticipates that local TV services would be subject to a single listing and one logical channel number (LCN), with different local TV services regionalised to the level of the existing TV regional structure: more granular regions would incur considerable expense for local TV services. Freesat consider that Video On Demand or IPTV could offer a more cost effective and flexible approach to delivery of local TV services.
- 2.79 DMOL manages the channel listing used by Freeview and other DTT brands. DMOL's response states that the likely intended allocation of channel positions for local public service television channels is logical channel number (LCN) 8 in England and Northern Ireland and LCN 45 in Scotland and Wales - being the lowest vacated LCN in these areas. The positions are being held vacant for the launch of local TV services. Should a lower LCN subsequently become vacant in Scotland or Wales, DMOL would hold the lower LCN vacant for the new local channels, and any lower LCN that subsequently becomes available would be offered first to the next public service channel below it.
- 2.80 Ofcom notes that DMOL is currently consulting on its general DTT channel listings policy, and has outlined its proposed policy in its response above. DMOL have invited responses to the consultation from stakeholders, and contingent on these will then confirm the position for local TV services.

- 2.81 Applicants should base their plans on the assumption that their services will be listed on the basis of the published positions by the relevant EPG providers.
- 2.82 Ofcom will consider the intention of the responses and where necessary seek further clarification from EPG providers. In doing so we will continue to assess whether the emerging proposals of each EPG provider is consistent with both the letter and spirit of the current legislation. As we obtain further information from EPG providers we will make this available to applicants. We will consider what steps are available to Ofcom should any of the responses fall short of the letter and spirit of current legislation. Subject to this will continue to engage with EPG providers to ensure that they provide certainty and appropriate prominence for local TV services. Although Ofcom expects that news provision will be an important part of the local services' content, it is not the primary purpose of these channels. Therefore Ofcom does not expect that they will be listed within the 'news' genre in the EPG. Ofcom reserves its right to carry out a full review of the existing Code to determine whether it is still fit for purpose.

## Section 3

# Programming

- 3.1 Article 3 of the s.244 Order sets out the description of a local digital television programme service. The questions in the *Application Form* are intended to ensure that the successful L-DTPS licensees will meet this description.
- 3.2 Ofcom must have regard to the statutory criteria set out section 18(6) of the 1996 Act which provides that Ofcom must, in determining whether and to whom to grant a local digital television programme service licence have regard to the following factors:
- 3.2.1 the extent to which any proposed service:<sup>8</sup>
- a) meets, or would meet, the needs of the area or locality where it is received;
  - b) would be likely to broaden the range of television programmes available for viewing by persons living or working<sup>9</sup> in that area or locality;
  - c) would be likely to increase the number and range of the programmes about that area or locality that are available for such viewing, or to increase the number of programmes made in that area or locality that would be so available; and
- 3.2.2 the ability of the applicant for the licence to maintain, throughout the period for which the licence would be in force, the proposed service.
- 3.3 Applicants should have regard to the description of a local digital television programme service set out in article 3 of the s.244 Order including article 3(5) which provides that a service will fall within the description of a local digital television programme service if it includes or would include a range of programmes which:
- 3.3.1 facilitates civic understanding and fair and well-informed debate through coverage of local news and current affairs;
  - 3.3.2 reflects the lives and concerns of communities and cultural interests and traditions in that area or locality;
  - 3.3.3 includes content that informs, educates and entertains and is not otherwise available through a digital television programme service which is available across the United Kingdom.

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<sup>8</sup> A service shall be taken for the purposes of 3.2.1(i) to meet the needs of an area or locality if, and only if:

- (a) its provision brings social or economic benefits to that area or locality, or to different categories of persons living or working in that area or locality; or
- (b) it caters for the tastes, interests and needs of some or all of the different descriptions of persons living or working in the area or locality (including, in particular, tastes, interests and needs that are of special relevance in the light of the descriptions of persons who do so live and work).

<sup>9</sup> References to persons living or working in an area or locality include a reference to persons undergoing education or training in that area or locality.

- 3.4 This section primarily relates to the content proposition sections of the application form and includes guidance on drafting Programming Commitments. It also describes the other content requirements for L-DTPS licensees.

### **Local and non-local programming**

- 3.5 It is a requirement of the L-DTPS licence that the studio from which the service will be broadcast, and/or the main production base, should be within the licensed area (i.e., local). All programming does not have to be from that studio and/or production base.
- 3.6 While often they may be the same, it is important to note that there is a difference between local *production* (where the programme is made) and local programme *material* (the content of the programme and its relevance to local audiences).
- 3.7 Where the *Application Form* asks for details of local programming, we will be specific about which sense of local is being used: locally-produced or local programme material.

### **Programme output and Programming Commitments**

- 3.8 Applicants are invited to describe their full programme output in relation to the statutory criteria, and to summarise this in their Programming Commitments. Together, these constitute the entire programming proposition in the application.
- 3.9 The Programming Commitments are set out in a 250 word summary of the programming output. These are for applicants to draft, but Ofcom reserves the right to modify some aspects of any draft commitments, in order, for example, to ensure clarity, and that they are fit for purpose and comply with legislative requirements.
- 3.10 In describing their programming output although applicants are encouraged to be ambitious, it is more important to be realistic and to make proposals based on their experience and resources.
- 3.11 As the Programming Commitments will be a binding licence condition, we encourage prospective applicants to consider very carefully what proposals they can realistically deliver.
- 3.12 We will assess applicants' proposals in the context of the scale of operations and the available resources.
- 3.13 We will assess applications on the basis of the entire programming proposition in the *Application Form* but only the Programming Commitments will become a binding licence condition.

### **Programming output**

- 3.14 The *Application Form* asks applicants to describe their proposed service and gives a number of questions that applicants should consider when describing their overall content proposition.
- 3.15 There are also specific questions that relate to the statutory criteria. These are intended to give applicants the opportunity to fully describe their local programming.

## Non-local programming

- 3.16 The *Application Form* then asks applicants to expand on any programming that is either not locally-produced, or not local programme material (4J):

*What will you broadcast outside of your planned hours of local programme and locally-produced material? Do you intend to share programming with other L-DTPS licensees? From whom do you propose to acquire any third-party programming and what will the nature of this programming be?*

- 3.17 We recognise that it may not be possible in this first L-DTPS licensing round for applicants to detail their proposals for content sourced from third parties, given some of these arrangements, for example, for sharing networked content, can only be made once other L-DTPS licences are awarded. However, applicants should state any intentions in this regard. Additionally, it is important for us to understand any implications for the business plan that follow from non-local programming. Non-local programming could represent a cost (e.g. bought-in content) or a revenue stream (e.g. teleshopping) for the local service.

## Sample schedule

- 3.18 Applicants are asked to illustrate their programming proposition with a sample schedule for one week. It is not necessary for this schedule to include fully developed programming concepts, e.g. shows with titles and further details such as named presenters. It is sufficient to identify which genres of programming will be scheduled in which hours of the day, across a week.

## Programming Commitments

- 3.19 The Programming Commitments comprise a statement summarising the local content proposition that the licensee will write themselves as part of the application process. The following sections address the drafting of the Programming Commitments.
- 3.20 This statement will be annexed to the L-DTPS licence and form part of a binding licence condition to ensure that the service's programming adheres to these commitments.
- 3.21 The licensee must report on how they meet these content requirements in their annual return to Ofcom.
- 3.22 The Programming Commitments are a matter of public record and any viewer of the service can complain to Ofcom if they believe a service is not adhering to its Programming Commitments. If it receives a complaint, Ofcom may request recordings of the service, which it will assess in order to reach a judgement as to whether the service is compliant with its licence conditions or not.

## Quantity and scheduling of local programming

- 3.23 We ask applicants to consider the quantity of broadcast output in their general description of the proposed service (4A), and again when drafting the Programming Commitments.
- 3.24 We are interested in the quantity of local programme material, and where it is substantially different from this, also the quantity of locally-made programming.

- 3.25 Applicants must also state in their Programming Commitments how much time and which elements of their proposed local programme material will be broadcast during 'peak time', which is 6-10.30pm.
- 3.26 There are no minimum quantities of broadcast output specified, in recognition that there are likely to be a wide range of creative visions for L-DTPSs proposed.

## News

- 3.27 We consider news to be the most important type of local programming and applicants must propose a reasonable provision of news and current affairs.
- 3.28 Again, there are no minimum quantity requirements, but with regard to news, we are unlikely to consider less than seven hours in total per week of broadcast news to be too burdensome for even the smallest L-DTPS licensee.
- 3.29 This does not mean that we expect L-DTPS licensees to produce an hour of continuous original news content per day. For example, a fifteen minute news bulletin, repeated four times in a day, provided it is updated, would count as an hour of broadcast news.
- 3.30 Applicants may propose news content on the basis of hours per week rather than hours per day.
- 3.31 We have published guidance and definitions for news and current affairs, which is included in the *Statement* and reproduced below in full. This should also serve as an ongoing reference for L-DTPS licensees when producing their news and current affairs programming.
- 3.32 The guidance is as follows:

*News: As the licence is for a local television service, the most important element of news provision should be local news. Local news should be high-quality, relevant, timely and accurate, as well as complying fully with the requirements of the Broadcasting Code, including due impartiality. A station should be able to react on-air to major local events in a timely manner. Bulletins should seek to reflect the interests and concerns of those living in the area. Local news stories should be up-to-date and regularly refreshed. Simply localising UK-wide news (e.g., by conducting vox pop interviews or inserting local place names into UK-wide stories) without local news/information generation would not be regarded as a valid approach to fulfilling local news requirements. Local news can contain local sports stories but these should not be the main component of news. Similarly, entertainment news or 'softer' local content such as 'what's-on' may be relevant locally but should not be the main ingredient of bulletins or replace local journalism.*

*Current affairs: A current affairs programme is one that contains explanation and/or analysis of current events and issues, including but not limited to material dealing with political or industrial controversy or with current public policy. Current affairs content is also required to be duly impartial.*

- 3.33 The purpose of this guidance is to ensure that news is journalism-led and that 'softer' types of news – including sports and entertainment news – do not drive a licensee's approach. This does not mean that sport and entertainment cannot form part of news

content, but these and other ‘softer’ types of local news, such as ‘what’s on’ listings, should not regularly or usually be the primary component of news programming. Likewise, it may sometimes be perfectly acceptable to localise national news stories to the benefit of the local audience, but this should not be a substitute for local reporting.

- 3.34 Both news and current affairs content must be duly impartial.

### Development of service

- 3.35 We recognise that local TV is an emerging sector and that it may be difficult to set out an accurate content proposition for the entire duration of the licence. Therefore some of the questions in the *Application Form* refer specifically to the first three years of programming output, and where relevant applicants should describe how the service will develop over time.
- 3.36 However, as licences are awarded for up to 12 years, the *Application Form* also asks applicants to consider how they envisage their service developing after the first three years. This is because we recognise that initially the business plans of some services may need more scope to develop the service in line with developing resources. We also received significant feedback during our consultation process that applicants would want to demonstrate how they see their service developing over the duration of the licence.
- 3.37 If applicants are content that they can deliver their Programming Commitments from the time of service launch then they should not feel obliged to propose significant developments to the service outside of their original plans.
- 3.38 Successful licensees must deliver their Programming Commitments, but they may exceed these commitments if they consider that they are able to do so.

### Content requirements

- 3.39 This section describes other content requirements that will be placed on L-DTPS licensees. This is set out under three headings:
- 3.39.1 The Broadcasting Code;
  - 3.39.2 Advertising and sponsorship;
  - 3.39.3 Other content requirements that apply to L-DTPS licences.

### The Broadcasting Code

- 3.40 All L-DTPS licensees must comply with Ofcom Broadcasting Code (the ‘Broadcasting Code’), and should ensure that their content proposition complies with this code.
- 3.41 Ofcom issues accompanying guidance to the Broadcasting Code. This is for guidance only, and applicants should take their own legal advice regarding specific instances of compliance with the Broadcasting Code.
- 3.42 Licensees should access a full copy of the Broadcasting Code via the Ofcom website <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>. It is set out in sections covering the following areas:

- 3.42.1 Protecting the under-eighteens;
  - 3.42.2 Harm and offence;
  - 3.42.3 Crime;
  - 3.42.4 Religion
  - 3.42.5 Due impartiality;
  - 3.42.6 Elections and referenda;
  - 3.42.7 Fairness;<sup>10</sup>
  - 3.42.8 Privacy; and
  - 3.42.9 Commercial references in TV programmes.
- 3.43 When preparing their business plans, applicants for L-DTPS licences should consider what arrangements they will need in order to make sure that all their output is compliant with the Broadcasting Code.

## Advertising and sponsorship

- 3.44 All L-DTPS licensees are subject to Ofcom’s Code on the Scheduling of Television Advertising (‘COSTA’), which can be found here: <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tacode.pdf>.
- 3.45 Advertising content is co-regulated by the Advertising Standards Authority (ASA). Rules on the content and scheduling of advertising are in the Broadcasting Committee of Advertising Practice’s Code (the ‘BCAP Code’), which can be found here: <http://www.cap.org.uk/The-Codes/BCAP-Code.aspx>.

## Advertising minutage

- 3.46 Consistent with Article 18 of the AVMS Directive, all L-DTPSs that are not receivable outside the UK are exempt from the advertising minutage restrictions set out in COSTA. However, if a service is receivable outside the UK, for example, because it is broadcast via satellite or the internet, it will not benefit from this exemption.
- 3.47 If a service broadcast on these platforms used geographic blocking or regionalisation so that it is not receivable outside the UK, it would again benefit from this exemption.

## Other content requirements

### Prohibited content

- 3.48 The s.244 Order specifically prohibits L-DTPSs from carrying two types of content. These are:
- 3.48.1 pornographic material;<sup>11</sup> and

<sup>10</sup> This section is referred to as the ‘Fairness Code’ in the L-DTPS licence and definitions.

<sup>11</sup> S.19A of the 1996 Act.

- 3.48.2 advertisements of a duration of at least three minutes *and* for a chat service made available for purchase by means of a premium rate service.<sup>12</sup>

### **Free-to-air**

- 3.49 Applicants should also be aware that the s.244 Order requires that L-DTPSs be provided without charge to any persons in the UK, i.e., free-to-air, not pay-per-view. Licensees or connected parties may not enter into any contractual or technical arrangements that would require UK viewers to pay to receive their services on DTT.

### **Party Political Broadcasts (PPBs) and Party Election Broadcasts (PEBs)**

- 3.50 The statutory framework requires L-DTPS licensees to carry Party Political Broadcasts (PPBs). During 2012, Ofcom will be consulting on revisions to the Ofcom rules on Party Political and Referendum Broadcasts. As part of this consultation, we will lay out proposals for how the obligations placed on L-DTPS licensees to carry party political broadcasts should be delivered. We envisage that any such proposals will be proportionate and commensurate to the overall content obligations that we envisage being applied to the local television sector.
- 3.51 The *Application Form* invites applicants to consider proposals to facilitate ‘civic understanding and fair and well-informed debate through coverage of local news and current affairs’. Like all content, this must comply with the Broadcasting Code, including a requirement for due impartiality.
- 3.52 We do not expect applicants to factor into their business plans any costs specifically associated with the obligation to carry PPBs.

### **Access service requirements**

- 3.53 Ofcom’s Code on Television Access Services<sup>13</sup> applies to all broadcasters, but television services achieving an average audience share of all UK households over a 12 month period of 0.05% or less are excluded from providing television access services. We anticipate that many, if not all, L-DTPS licensees will be exempt under this rule as a result of their audience share.
- 3.54 Although not a regulatory requirement or a criterion for licence award, we welcome any content propositions that do include provision of access services.

### **Retention of recordings**

- 3.55 All licensed television broadcasters are required to retain recordings of their output under the 1990 Act. L-DTPS licensees must keep recordings for 60 days.
- 3.56 This requirement applies to all broadcast output, and not just to certain types of programming.

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<sup>12</sup> S.19B of the 1996 Act.

<sup>13</sup> This is referred to as the ‘Code on Subtitling, Signing and Audio Description’ in the L-DTPS licence and definitions.

## Independent production quotas

- 3.57 There is a requirement for digital programme service licensees, which will include L-DTPS licensees, to fulfil a 10% independent production quota.<sup>14</sup> Following the DCMS consultation on the role of independent producers and independent production quotas in local TV,<sup>15</sup> the Government has decided to remove this quota in relation to local TV. This will require a new Order to be passed by Parliament. Until such time as the law is changed, L-DTPS licensees will be required to comply with this quota.
- 3.58 The AVMS Directive also includes quotas on European works and European independent works, but allows the UK (like any other EU member state) to exempt local TV channels that do not form part of a national network from these obligations. This exemption applies to L-DTPSs.

## Compliance

- 3.59 Applicants should provide details in their application of the procedures they will put in place to ensure that the service as broadcast is compliant with the Broadcasting Code, all other relevant codes (as may be revised by Ofcom from time to time) set out in this section and the licence conditions specific to an L-DTPS. This should be a brief outline of the proposed procedures, and will not be included in the licence conditions.
- 3.60 This is so that Ofcom can fulfil its statutory duties with regard to enforcing its codes, and be satisfied that applicants have understood the particular requirements that apply to television broadcasting.

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<sup>14</sup> s.309 of the Communications Act.

<sup>15</sup> See <http://www.culture.gov.uk/consultations/8840.aspx>.

## Section 4

# Funding and business plan

- 4.1 When assessing L-DTPS licence applications, Ofcom must have regard to the ability of the applicant to maintain the proposed service for the duration of the licence. This is one of the statutory criteria for award.<sup>16</sup>
- 4.2 This section sets out information that L-DTPS licence applicants should consider when putting together their business plans. It also describes some of the things Ofcom expects to be shown in the business plan section of the L-DTPS licence application.
- 4.3 We recognise that there will be a range of business models within this sector, and so the description of our expectation is not exhaustive. There may be some very different ways to run a local TV service successfully.

## BBC content funding

- 4.4 The BBC has committed to providing up to £15 million of content funding to L-DTPSs, between the start of licences and the end of the current Charter period. The BBC has indicated that this is until the end of March 2017. This money will be provided from the BBC's television licence fee income.
- 4.5 This funding is not regulated by Ofcom, nor does Ofcom have any responsibility for it.
- 4.6 All L-DTPS licensees are eligible for this funding, and the BBC has published a set of high-level principles about how it intends to disburse this funding by buying news stories from L-DTPS services. This document is available here: <http://www.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/localtv.html>.
- 4.7 This funding is only available for stories suitable for inclusion in the BBC's regional and national news programming and services, and is weighted towards the first year of operation for each L-DTPS. This is in order to provide more guaranteed funding in the start-up period when it is most needed.
- 4.8 Subject to meeting minimum quality requirements, the BBC's proposal is to buy around 85 stories per month for £150,000 in the first year of operation; around 35 stories per month for £60,000 in the second year of operation; 10-15 stories per month for £20,000 in the third year of operation.<sup>17</sup> This is not the limit of the content funding, and so services may be able to provide more content than these monthly figures in order to acquire more funding. More detail is available in the BBC funding document, and this *Invitation to Apply* should not be taken as confirming that any L-DTPS licensee will get any funding.
- 4.9 Any such BBC funding that L-DTPS licence applicants intend to rely on, should they win the licence and start broadcasting their proposed service, should be included in business plans. Applicants should also be able to demonstrate how they will replace the BBC content funding as a revenue stream as it decreases over the first three years, and once it has been exhausted after the end of March 2017.

<sup>16</sup> S.18 (6)(b) of the 1996 Act.

<sup>17</sup> These figures have been amended in line with the BBC's published amendments to the proposals for disbursing content funding (July 2012).

## Business plans – what we expect to see

### Ability to maintain service and the character of the service

- 4.10 As noted above, one of the statutory criteria for licence award is the ability of the applicant to maintain the proposed service throughout the period for which the licence would be in force. L-DTPS licensees are also required to maintain the character of the service. Applicants must explain in detail how the character of the service, as proposed in the application, is to be maintained for the period for which the licence would be in force.<sup>18</sup> This will be assessed primarily from the business plan.
- 4.11 As with the Programming Commitments, we encourage applicants to propose realistic business plans that can sustain their proposed service and its character.

### Funding

- 4.12 Applicants are required to submit information regarding their present and projected financial position during the period for which the licence would be in force. More specifically, where the applicant is an existing company, or a subsidiary of an existing company, the applicant should provide its and/or its ultimate parent's last three year's statutory accounts and current year's management accounts.
- 4.13 Ofcom will need to be assured that the applicant has access to adequate initial funding to establish the proposed service. Ofcom therefore requires applicants to provide full details of the type, sources and amount of funding or proposed funding to be used to fund the licence, including any material terms and conditions (as set out in 14A) attached to such funding.
- 4.14 If the availability of funding is dependent upon any condition(s), applicants must explain what these conditions are, to which part of the funding they relate and how the applicant will fulfil these conditions and when these conditions must be met by. Applicants may also include details of any in-kind support they have or may receive and detail any conditions attached to any such in-kind support.

### Financial projections

- 4.15 Ofcom will also need to be assured that the applicant has made a realistic estimate of the revenues and costs associated with providing the service, in order to ensure that the service is capable of delivering its Programming Commitments. Applicants are therefore required to submit their financial projections, which may include profit and loss accounts, balance sheets and/or cash-flow forecasts.
- 4.16 As a minimum, we require sufficient revenue and cost information to enable Ofcom to understand what revenue and the expected costs of providing the service are. It is therefore important that applicants state all of their assumptions and provide sufficient detail to support these assumptions.
- 4.17 Financial projections should be submitted as an excel spreadsheet or equivalent. We expect most respondents will already have prepared financial projections for their own purposes. However, should an applicant need guidance in preparing their financial projections, an excel template can be requested from Ofcom by emailing [local.tv@ofcom.org.uk](mailto:local.tv@ofcom.org.uk).

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<sup>18</sup> S. 18 (2)(d) of the 1996 Act.

- 4.18 This template for financial projections is designed to ensure that Ofcom has the minimum level of information necessary to make a decision on licence award. Applicants who are sufficiently confident in their own, fuller, projections, should supply those instead of using this template. If an applicant is in doubt about whether they should use this template for financial projections, then we recommend that they request it.
- 4.19 In the course of assessing applications, we may seek clarification and/or amplification of the information or proposals in any application and require any applicant to furnish such additional information in such form or verified in such manner as we may specify. This can include the financial information submitted. This will be done through correspondence with the contact nominated in the application. If appropriate, we may make further enquiries. This must be done within the time period specified by Ofcom, which will be no less than 14 days.

### **Revenue outline**

- 4.20 Ofcom will need to understand what the projected sources of revenue are and how this revenue stream will be achieved. This is to ensure that Ofcom is satisfied that the proposed business plan is achievable.
- 4.21 For example, where the applicant's financial projections include advertising or revenue, applicants must provide details about the way in which this revenue is to be generated (who they expect the main advertisers will be and how they plan to sell advertising).
- 4.22 Ofcom has set out a number of questions which may assist applicants, however if these questions are not applicable, applicants should explain what revenue sources they are expecting and provide details on how this will be generated.

### **Management and operations**

- 4.23 In order to assist Ofcom in assessing the ability of the applicant to maintain the licensed service, applicants should also provide details of the management and staffing structure. This should include a list of directors, an indication of management structure and information about who is responsible for the day-to-day running of the station. Unpaid staff, as well as paid staff, should also be included in the details of the staffing structure.
- 4.24 Ofcom has also set out a number of questions relating to the experience of the applicant group. This includes broadcasting experience, but also experience in other relevant areas, including journalism, local business, third sector and fundraising. These need only be brief summaries of any experience the applicant feels is relevant to their business plan. We appreciate that applicants may wish to demonstrate experience in a variety of different sectors.
- 4.25 Applicants should also include a description of any agreements they have made or are in the process of negotiating with third parties. For agreements already in place, a copy of the agreement and a summary of its key terms should be included. This information may be redacted in the 'for publication' version.

### **Risk**

- 4.26 Ofcom has also set out a question regarding the main risks that the applicant sees to its business plan. Applicants should include a brief analysis of the main risks to their

business plan, along with their proposals for addressing these. This is to help Ofcom to assess whether the proposals are realistic proposals for the applicant's resources.

## Section 5

# Relationship with local multiplex licensee

## Transmission costs

- 5.1 The statutory framework sets out that the local multiplex provider is not able to charge L-DTPS licensees a carriage cost that exceeds the cost to the local multiplex provider of providing that facility. This is defined in the s.244 Order as ‘net operating costs’, which are ‘operating costs reasonably incurred by the [multiplex] licence holder for the broadcast of that service, so far as these costs are not met by funding made available to the [multiplex] licence holder by the BBC’.
- 5.2 The BBC Trust is providing up to £25 million to the local multiplex operator to cover the capital costs of build-out.<sup>19</sup> This funding is not regulated by Ofcom, nor does Ofcom have any responsibility for it.
- 5.3 Arqiva has published Reference Offers which provide an indication of the price that Arqiva would charge for transmitting the local TV multiplex service. These Reference Offers are aimed at potential multiplex applicants, but as they specify the operating cost at each of the 44 sites, they also give a guide to potential L-DTPS licence applicants of the likely costs of transmission for each site.
- 5.4 The Reference Offers can be found here:  
<http://stakeholders.ofcom.org.uk/consultations/local-tv/arqiva-offer>.
- 5.5 This is not a guarantee of the price that will be charged by the local multiplex operator, nor of the price that would be determined by Ofcom, if required, in the event of a dispute.
- 5.6 There is uncertainty for L-DTPS licence applicants as to whether the local multiplex operator will make commercial use of the spare multiplex capacity at each site. If it does, then it would be reasonable for L-DTPS licence applicants to assume that they will pay approximately one third of the local operating costs in the Reference Offer.
- 5.7 Given this uncertainty, our approach to this cost in our assessment of L-DTPS licence applicants’ business plans will be that applicants should plan to cover approximately one third of the local operating costs in the Reference Offer. However, we will also expect applicants’ business plans to take into account the possibility that this cost could be higher, and display some contingency for this eventuality.
- 5.8 For more guidance on interpreting Reference Offers see Annex 2 of the *Local TV Licensing Statement*, which provides information on what is included in a reference offer and what this information means.
- 5.9 Carriage cost does not include the cost of the delivery of signal to the transmission site. This is the responsibility of the L-DTPS licensee.
- 5.10 The s.244 Order provides that in the event of a dispute between the local multiplex licensee and the L-DTPS licensee over carriage costs, Ofcom will determine the sum to be charged by the local multiplex licensee. However, we expect that the two parties would seek to resolve such matters between themselves wherever possible.

<sup>19</sup> [http://www.bbc.co.uk/bbctrust/our\\_work/other/local\\_tv\\_contribution.shtml](http://www.bbc.co.uk/bbctrust/our_work/other/local_tv_contribution.shtml)

- 5.11 Where the parties cannot agree and Ofcom were to make a determination on the carriage cost amount, it is likely that the following principles would apply:
- 5.11.1 It is up to the local multiplex licensee to demonstrate the basis of their cost calculations.
  - 5.11.2 Central costs of the local multiplex licensee should only be reflected in the cost of carriage for an L-DTPS if they are not attributable to commercial deployment of the additional two video streams. For example, office/staff costs might be reflected, but not national satellite distribution if this is used to carry the two commercial video streams to local sites, or any central multiplexing costs. The main components of costs to the L-DTPS licensees are expected to comprise managed transmission services (including network access) and electricity.
  - 5.11.3 If the BBC funding includes a contribution towards the multiplex operating costs, we would expect this to be reflected in the cost calculation for L-DTPSs.
  - 5.11.4 If the business model of the local multiplex provider includes gaining revenue from the multiplex capacity not used by a local service (i.e. the two extra video streams) then we would still expect the L-DTPS licensee to make a contribution towards the costs attributable to the L-DTPS.
  - 5.11.5 Conversely, however, if the L-DTPS is the only service carried, then all locally attributable costs would need to be covered. The FTI Consulting viability research annexed to the *Licensing Local Television consultation*<sup>20</sup> suggested that in this scenario, the costs would not be too great a burden for L-DTPS licensees to bear.
  - 5.11.6 Should the local multiplex provider seek to increase its coverage through transmitter enhancements that would result in a potential increase in the cost to the local service, then the increase in cost should only be passed on to the L-DTPS licensee if the increase in coverage is of benefit to the local service. For example, increasing coverage in a location where there is no natural affiliation to the L-DTPS's core target editorial area may not be of any benefit to the L-DTPS licensee.
- 5.12 While we will consider each request for a determination of the sum on a case by case basis, we would expect any actual determination to quickly indicate a precedent to the local multiplex licensee and L-DTPS licensees for how we would approach any future dispute of this nature.

### **Requirement to co-operate**

- 5.13 The statutory framework includes a requirement that the L-DTPS licensees and the local multiplex licensee co-operate with each other to facilitate the provision of local TV.
- 5.14 The local multiplex is required to broadcast the L-DTPS and the L-DTPS licensee is required to provide the service to the local multiplex licensee. It is in the interests of both parties to co-operate.

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<sup>20</sup> FTI Consulting Report:

<http://stakeholders.ofcom.org.uk/binaries/consultations/localtv/annexes/Annex6.pdf>

- 5.15 L-DTPS licensees are also required under the s.244 Order to take steps to participate in the formation of a legal entity and in co-operation with that entity to seek to measure the number of viewers of the service. They must also encourage that legal entity to apply for a local multiplex licence, or to negotiate for a local multiplex licence, which becomes available. This is a licence condition.
- 5.16 We do not expect any applicants for the local multiplex licence or the L-DTPS licences to make suggestions for the formation of this entity in their applications, as it is not until licences have been awarded that the relevant parties will have been identified.
- 5.17 However, without being prescriptive about the constitution of the entity, so as to facilitate matters, Ofcom intends to make arrangements to incorporate the entity (a company limited by guarantee) for the purposes of furthering the provision of local digital television services.
- 5.17.1 It will be a licence condition that a licensee will be granted ownership of one share in the entity (one share per licence).
- 5.17.2 When we grant the final L-DTPS licence in Phase 1,<sup>21</sup> we intend to transfer the share(s) in the newly formed entity to each Phase 1 L-DTPS licensee.
- 5.17.3 As we grant further L-DTPS licences after Phase 1, it is intended that those licensees will also be granted ownership of one share (per licence) in the entity.

## Technical requirements

- 5.18 Each L-DTPS licensee is required to make the L-DTPS available to be broadcast on the local multiplex at all times, and in the technical format specified by Ofcom. The technical details of this will be made clear in the L-DTPS licence when it is granted. Technical formats will be agreed after licence awards have been completed.
- 5.19 The interface point is at the relevant transmitter site and delivery to that point is the responsibility of the L-DTPS licensee.

## Extension of coverage

- 5.20 Post licence award, both the local multiplex and L-DTPS licensees are able to request an extension of coverage, or coverage of a new location, not included in the original technical plan, providing this is technically possible.

### At L-DTPS licensee's request

- 5.21 Where an L-DTPS licensee requests that coverage is extended, whether that is by extending coverage from an existing site, or by building supplementary relay transmitters, the local multiplex licensee is required to facilitate this provided the L-DTPS licensee covers the cost of the extension.
- 5.22 Ofcom will take into account the impact on the local multiplex operator when considering requests for extension of coverage.

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<sup>21</sup> The final licence that we are able to award out of the 21 licences advertised in this document.

### **At local multiplex licensee's request**

- 5.23 The local multiplex licensee may also request extension of coverage.
- 5.24 We would not expect the local multiplex licensee to build out to a location where there was no L-DTPS operator, as the local multiplex licensee is only required to build out to locations where there is an appropriately-licensed L-DTPS operator. Our view is that there is no point in building out a service for it to remain unused.
- 5.25 Should the local multiplex provider seek to increase its coverage through transmitter enhancements that would result in a potential increase in the cost to the L-DTPS licensee, then the increase in cost should only be passed on to the L-DTPS licensee if the increase in coverage is of benefit to that licensee. For example, increasing coverage in a location where there is no natural affiliation to the local service's core target editorial area may not be of any benefit to the L-DTPS licensee.
- 5.26 Ofcom will take into account the impact on any L-DTPS licensee affected by this extension, and they will have the opportunity to make representations to Ofcom concerning this request. However, this approach does not allow L-DTPS licensees an effective veto over any coverage extension requested by the local multiplex operator, as this does not reflect the statutory requirements for mutual co-operation.
- 5.27 As our indicative coverage planning is a minimum coverage requirement for the local multiplex operator, so we will be unlikely to license an L-DTPS licence applicant who thinks this coverage area is too great. By the same token, we are unlikely to accept requests for reduction in coverage post licence award.

## Section 6

# Other information for applicants

## Licence fees

6.1 Annual L-DTPS licence fees are calculated as a percentage of the relevant turnover of the licensee. These are set out in Table 1 below.

**Table 1: Category A PSB Fees 2011/12**

Relevant Turnover		% of revenue payable as annual fee
£0m -	£10m	0.12326%
£10m -	£35m	0.18489%
£35m -	£75m	0.27733%
£75m -	£300m	0.41600%
Over	£300m	0.0%

## Licence transfer/variation

- 6.2 There is a fee of £1,000 for any licence transfer or variation.
- 6.3 A licence can only be transferred from one body to another with the prior written consent of Ofcom. The legislation stipulates that such consent shall not be given unless Ofcom is satisfied that the party to whom it is proposed to transfer the licence would be in a position to comply with all of the licence conditions throughout the remainder of the licence period. A licence transfer request can only be considered from the current holder of the licence. The party to whom it is proposed to transfer the licence will be asked to provide information about the body corporate that will hold the licence, evidence of funds available to the new licence-holder to sustain the service going forward, and other information as deemed appropriate at the time of the request.
- 6.4 However, if the body corporate were to change ownership, for example, if all of the shares in a company were sold to another company, but the original body corporate remained and was still the named licensee, then Ofcom must be notified of the change in ownership but does not have to give permission for the change in ownership.
- 6.5 Ofcom reserves the right to revoke a licence after it has been awarded or granted if changes take place which affect the nature or characteristics of the licensee, or in the persons having control over or interest in the licence, such that they would have affected Ofcom's decision to award the licence had the changes occurred before the award. This does not mean that all changes in the ownership of a licensee are necessarily problematic. If there are changes to your licensee, you are advised to seek advice from the Local TV Licensing team at Ofcom as soon as possible (see paragraph 1.5 for contact details). Prompt notification to Ofcom of any change in control will be required.

## Annual return

- 6.6 L-DTPS licensees must complete a short, factual, annual return. This is so that Ofcom can report on this emerging sector, and to minimise the compliance work Ofcom will have to do, along with its attendant burdens on licensees. We also collect information on licensees' relevant turnover in order to calculate annual fees.
- 6.7 The first annual return will only need to be completed once the service has been broadcasting for a full year.
- 6.8 Ofcom will confirm the format and process for submitting annual returns once the first licences have been awarded. We do not intend this to be an onerous burden on local services.
- 6.9 For the scope of the annual return, see Table 2 below.

**Table 2: Scope of annual return**

Average daily hours of transmission: <ul style="list-style-type: none"> <li>- Weekdays</li> <li>- Weekends</li> </ul>
Average daily hours of editorial programming (by slot time): <ul style="list-style-type: none"> <li>- Weekdays</li> <li>- Weekends</li> </ul>
Average daily hours of teleshopping and long form advertising content (by slot time)
Average hourly advertising minutage in: <ul style="list-style-type: none"> <li>- peak (6pm to 11pm)</li> <li>- off-peak (11pm to 6pm)</li> </ul>
Average daily hours (and spending) of local programming (by slot time): <ul style="list-style-type: none"> <li>- first run originations</li> <li>- first-run acquisitions</li> <li>- repeats (broken down into originations and acquisitions)</li> </ul>
Proportion of first-run hours/spend on programmes that are produced within licensed area
Average number of live hours (and spend) per week (by slot time) (and % that are news)
Average hours (and spend) of news programming per week (by slot time)
Average hours (and spend) of current affairs per week (by slot time) – first-runs and repeats
Licence commitments, and performance against them: <ul style="list-style-type: none"> <li>- licence commitment 1</li> <li>- licence commitment 2</li> <li>- licence commitment 3</li> </ul>
Description of type and amount of local programming not comprised within news and current affairs
Relevant turnover

## Sanctions

- 6.10 Ofcom is empowered to apply specific penalties in respect of breaches of licence conditions. This includes breaches of programming commitments and requirements set out in the codes which the licensee is required by the licence to comply with. These sanctions include the power to direct a licensee to broadcast a statement of findings, to impose financial penalties, to shorten the licence period, to suspend the licence, or to revoke the licence.
- 6.11 The imposition of a statutory sanction against a broadcaster is a serious matter. Ofcom may, following due process, impose a statutory sanction if, for example, it

believes that a licensee has repeatedly, deliberately, or seriously breached the terms of its licence conditions, or Ofcom's Codes (though our powers are not limited to those cases and we may exercise them in others). Where a licensee is found to be in breach, the degree to which any penalty is applied must be appropriate and proportionate to the contravention in respect of which it is imposed. In addition, Ofcom must have regard to any representations made to them by or on behalf of the regulated licensee concerned.

**Annex 1**

# Document history

<b>Version</b>	<b>Date</b>	<b>Details</b>
1.0	10 May 2012	Document published
2.0	15 May 2012	Clarification in relation to technical format at paragraph 5.18.
3.0	July 2012	Paragraph 4.8 amended in line with BBC's published amendments to content funding arrangements.