

Digital Television Programme Services

Digital Television Additional Services

Guidance notes for licence applicants

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Introduction

General disclaimer

- 1.1 These notes are intended to help Digital Television Programme Service (DTPS) and Digital Television Additional Service (DTAS) licence applicants understand the licensing process. The guidance notes should not be relied upon as legal advice, or be understood as modifying the effect of the statutory requirements or the conditions of the licence.
- 1.2 Applicants should seek their own legal advice on the licensing process and requirements, and when making their own independent assessment on the information that should be included in their application.
- 1.3 In providing the information in these guidance notes, Ofcom is not making, nor implying any judgements on the commercial prospects (or otherwise) of licensed services, or that they will be profitable.
- 1.4 Ofcom makes no representation or warranty, express or implied, with respect to information contained in these guidance notes (together with the standard form licence and other documents referred to in this document) or with respect to any written or oral information made or to be made available to any potential applicant or its professional advisers. Any liability therefore is expressly disclaimed.
- 1.5 These guidance notes may be updated from time to time. Applicants should check Ofcom's website to make sure they are using the most recent version. Applicants should also be aware that certain key features, such as fees, procedures and content rules, may change in the future.
- 1.6 Application forms must be signed by the duly authorised individual on behalf of the licensee¹ and submitted in hard copy to:

Ofcom
Broadcast Licensing
Riverside House
2a Southwark Bridge Road
London
SE1 9HA
- 1.7 If you have any queries you can contact Ofcom's Broadcast Licensing team by email (broadcast.licensing@ofcom.org.uk).
- 1.8 You may also wish to read the DTPS and DTAS Guidance notes for licensees² which provides information about the licensing requirements and the conditions that licensees are subject to.

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

² Available at:

https://www.ofcom.org.uk/_data/assets/pdf_file/0023/44825/dtps_dtas_guidance_notes_for_licensees.pdf

What is a Digital Television Programme Service (DTPS)/Digital Television Additional Service (DTAS)?

- 2.1 Digital Television Programme Services (DTPS) and Digital Television Additional Services (DTAS) are services broadcast for reception by members of the public on a digital terrestrial television (DTT) multiplex.
- 2.2 Part I of the Broadcasting Act 1996 (as amended)³ describes digital terrestrial television multiplexes, a DTPS, a DTAS and the licensing regime which applies to them. Further information about multiplexes is set out in paragraphs 2.7 to 2.11 below. Whether your service requires a DTPS or a DTAS licence depends on the service you will be providing.
- 2.3 A DTPS is a service consisting of the provision of television programmes i.e. it consists wholly or mainly of images capable of being seen as moving pictures. The definition of a DTPS excludes qualifying services⁴ and teletext services, but includes text or data which is ancillary to the DTPS (such as subtitling or audio-description). Generally, a DTPS consists of “normal” television channels (consisting of moving pictures), including their interactive enhancements.
- 2.4 A DTAS is a service which usually consists of self-standing text or data services, including teletext services and EPGs. A DTAS is defined in the Broadcasting Act 1996 largely by what it is not⁵, i.e. it is not a qualifying service, a Digital Sound Programme Service (DSPS)⁶, an ancillary service⁷ or a technical service⁸.
- 2.5 DTPS/DTAS licences can have multiple services on one licence.
- 2.6 Television services made available using either satellite, a radio multiplex, or an electronic communications network (like cable) are licensed as Television Licensable Content Services (TLCS). Separate Guidance notes for applicants for TLCS licences are available on the Ofcom website⁹.

³ Available at: <http://www.legislation.gov.uk/ukpga/1996/55/contents>

⁴ Defined in section 2 of the Broadcasting Act 1996 as: a television broadcasting service included in Channel 3; Channel 4; Channel 5; S4C; a television programme service provided by the Welsh Authority; and the digital public teletext service.

⁵ See the definition of a DTAS in section 24 of the Broadcasting Act 1996.

⁶ For more information on DSPS services, please visit: <https://www.ofcom.org.uk/manage-your-licence/tv-broadcast-licences/apply-for-a-tv-broadcast-licence>.

⁷ An ‘ancillary service’ is defined in section 24(2) of the Broadcasting Act 1996 as a service which is provided by the holder of a DTPS licence (or by a relevant public broadcaster) and consists in the provision of: assistance for disabled people in relation to some or all of the programmes included in the digital programme service or qualifying service provided by it; a service (apart from advertising) that relates to the promotion or listing of programmes included in such a service or in a digital sound programme service; or any other service (apart from advertising) that is ancillary to one or more programmes so included and relates directly to their contents.

⁸ A ‘technical service’ means a service which is provided for technical purposes connected with the encryption or decryption of one or more digital programme services, digital sound programme services or digital additional services and is specified in an order made by the Secretary of State.

⁹ Available at: https://www.ofcom.org.uk/data/assets/pdf_file/0020/10883/tlcs_guidance.pdf

Digital Terrestrial Television Multiplexes

- 2.7 A multiplex is a collection of television programme, radio and data services that are broadcast together in a digital signal that occupies no more spectrum than just one analogue television service. Multiplexes are generally licensed by Ofcom under the Broadcasting Act 1996 or under the Wireless Telegraphy Act, with the exception of 'Multiplex 1' which was granted by the Government. There are six national television multiplexes:
- Multiplex 1 is operated by the BBC under their Royal Charter and Agreement with the Secretary of State for Culture, Media and Sport. Multiplex 2 is operated by Digital 3 and 4 Limited (jointly owned by Channel 3 and Channel 4) and the capacity on this multiplex is split between Channel 3 and Channel 4. Multiplex A is operated by SDN Limited (controlled by ITV plc), and 50% of the capacity on this multiplex is reserved for Channel 5 and (in Wales) S4C. Multiplex B is operated by BBC Free to View Limited. Multiplexes C and D are operated by Arqiva Limited.
- 2.8 In addition there are three further multiplexes which do not have national coverage:
- The Local Multiplex is operated by Comux Limited, and provides DTT access for local services which are licensed following a competitive award process¹⁰.
 - Multiplex E is operated by Arqiva Limited. It is licensed under the Wireless Telegraphy Act 2006.
- 2.9 The Northern Ireland Multiplex is operated by Multiplex Broadcasting Services N.I. Limited. The multiplex licences contain conditions for the provision of television broadcast services which are carried on the multiplex. Some of the conditions place obligations on the multiplex provider with regard to the range and nature of the services it may carry, for example, Multiplex B reserves capacity for High Definition Public Service Broadcasters. Please note, however, that the multiplex provider's licences do not all contain identical conditions. For full information about the conditions that multiplex providers are subject to, you should refer to the multiplex licences and, where appropriate, the relevant legislation. The multiplex licences issued by Ofcom, along with contact details for the multiplex providers, are available on the Ofcom website¹¹. Each application for a DTSP or DTAS licence must be accompanied by a letter from the relevant multiplex provider, confirming that it will carry the service.
- 2.10 More information on the different types of television licence, including application forms and guidance notes for applicants, is available on our website.¹²

¹⁰ For information about the local TV licensing process see <https://www.ofcom.org.uk/manage-your-licence/tv-broadcast-licences>

¹¹ Available at: <https://www.ofcom.org.uk/manage-your-licence/tv-broadcast-licences/current-licensees/multiplex>

¹² Available at: <https://www.ofcom.org.uk/manage-your-licence/tv-broadcast-licences/apply-for-a-tv-broadcast-licence>

Before you apply for a DTPS or DTAS licence

This section contains important information you should take account of before submitting your DTPS or DTAS application form.

Submitting a valid application

- 3.1 The application form for DTPS and DTAS licences can be found on Ofcom's website¹³. The application form also serves as the form of notification to Ofcom of a service provider's agreement with a multiplex provider (see paragraphs 3.7 to 3.8 below). Applications for DTPS or DTAS licences can only be made using this form. Applicants should ensure that they always refer to the most recent editions of the guidance notes and application form when submitting their application.
- 3.2 We encourage applicants to download the editable version of the application form from our website and fill it in on a computer. Ofcom will accept handwritten application forms, but they must be filled in using block capitals and black ink. We will not accept illegible application forms.
- 3.3 You must fill in all sections of the application form. If a section is not applicable, you should indicate this by writing "N/A". The declaration in Section 11 of the application form must be signed and dated, and the form submitted in hard copy to the address listed at paragraph 1.6.
- 3.4 Applicants are responsible for assessing whether their proposed service requires a DTPS or a DTAS licence. You may wish to take your own professional advice in order to comply with this obligation. Ofcom cannot determine for you whether you need a licence or not and you should not rely on the guidance provided in these notes.
- 3.5 If you are completing the form as an agent, i.e. you are acting on the applicant company or individual's behalf, please make this clear in an accompanying letter, and provide evidence of your authority to act on behalf of the applicant. The form should be filled in so as to include information about the applicant, not the agent. If there are further clarifications required by Ofcom once the application has been submitted these will be made to the applicant, not to the agent.
- 3.6 The application form must be accompanied by the supporting documents detailed in the checklist (see paragraph 4.39). If an original document is not in English, it should be submitted with a translated copy.

Notification of agreement with multiplex provider

- 3.7 In submitting your DTPS or DTAS licence application, you are formally notifying Ofcom of an agreement with the multiplex licensee that will carry your service. In addition, in support of your application, you must supply a letter from the multiplex

¹³ Available at: https://www.ofcom.org.uk/_data/assets/pdf_file/0026/27278/dtpsdas-application-form.pdf

licensee, confirming what you have stated in your application with respect to the notification (see Section 7 of the application form).

3.8 If a licence is granted, you will need to request Ofcom to vary your licence if:

- you make a new agreement with a multiplex provider (for example, for carriage of an additional service); or
- there is a variation or a cessation to the agreement between yourself and the multiplex provider.

3.9 If you need to request Ofcom to vary your licence, you should complete a separate form: the Application to vary an existing service or to add a new service to an existing Digital Television Programme Service (DTPS)/Digital Television Additional Service (DTAS) or variation to an existing DTPS/DTAS¹⁴. You should submit this to Ofcom as soon as the agreement with the multiplex operator has been made, and in any event no later than 28 days after that agreement (see Condition 12(2) of the DTPS licence or Condition 9(2) of the DTAS licence).

Determining who should hold the DTPS or DTAS licence

3.10 Ofcom considers that a person will normally have general control if that person exercises effective control over the selection of programmes that comprise the service/s and their organisation into a programme schedule. It is that person who will normally be treated as being the provider of the relevant service/s and who will need to hold a broadcasting licence authorising its provision. The full guidance document can be found on our website, which applicants should read before applying for a licence¹⁵.

Electronic Programme Guides

3.11 If the licensed service is an electronic programme guide, it must comply with Ofcom's Code of Practice on Electronic Programme Guides¹⁶, as well as the relevant content rules.

Timescales

3.12 We will normally acknowledge your application within two working days. If an application cannot be considered (e.g. because it is illegible; the correct fee has not been submitted; the applicant has used the wrong form; etc.), we will normally return the application form to the applicant.

3.13 As a guideline, our aim is to issue a licence within 25 working days. However, this cannot be guaranteed. Applications are assessed on a first come, first served basis, and during peak periods it may take longer for us to assess applications. The timeframe also assumes that full and accurate information has been provided by the applicant in the application form and accompanying documentation. Applications will not be assessed until all the requested information has been submitted.

¹⁴ Available at: <https://www.ofcom.org.uk/manage-your-licence/tv-broadcast-licences/changes-to-tv-broadcast-licences>

¹⁵ Available at: https://www.ofcom.org.uk/_data/assets/pdf_file/0019/8326/service-provider.pdf

¹⁶ Available at: <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/epg-code>

¹⁷ Available at: https://www.ofcom.org.uk/_data/assets/pdf_file/0028/88219/Guidance-for-religious-bodies.pdf

- 3.14 Applicants with religious objects are advised to allow approximately eight weeks for their application to be considered by Ofcom in the light of the Guidance for religious bodies applying for a Broadcasting Act licence¹⁷.
- 3.15 Ofcom has a duty to ensure that it does not license bodies with objects which are of a wholly or mainly political nature. Applications where questions arise on this issue may take significantly longer for Ofcom to consider than other applications.
- 3.16 Ofcom may refuse to issue a DTPS or DTAS licence if the applicant is not a “fit and proper person”¹⁸; if the applicant is a “disqualified” person¹⁹; or if the proposed service would be likely to involve contraventions of the standards for programmes and advertising²⁰.
- 3.17 In cases where Ofcom has instigated sanctions procedures against an existing Licensee which may lead to the revocation of any licence(s) it holds, it will not generally consider any applications for new licences by the same licensee or by a person/body connected to that licensee until such time as **that aspect of** the sanctions procedure is concluded. Similarly, Ofcom will not generally consider transfer applications either to or from a licensee while a sanctions procedure which may lead to licence revocation is ongoing.
- 3.18 Ofcom will normally only issue a DTPS or DTAS licence if the applicant has supplied a letter from the relevant multiplex provider confirming carriage of the service (see paragraph 3.7 above).
- 3.19 To be able fully to consider an application, we may need to request further information or clarification from the applicant. If we don’t receive a response to a request for further information within one month, we will consider the application to have lapsed.

Application fee

- 3.20 The application must be accompanied by the application fee. Application fees are reviewed by Ofcom annually, and applicants should consult the Ofcom website for the most up-to-date fees. Our tariff tables are published no later than 31 March each year²¹. The current application fee is £2,500 per application. This payment is non-refundable.
- 3.21 The application fee can be paid by BACS transfer or cheque.
- 3.22 **Paying by BACS transfer:** application fees can be paid directly by BACS transfer. Confirmation of payment should be emailed to broadcast.licensing@ofcom.org.uk and a printed copy should be included with your application. Payment details for paying via BACS transfer can be found below.

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

Account Name: Office of Communications

¹⁸ Under section 3 of the Broadcasting Acts 1990 and 1996.

¹⁹ Under Schedule 2, Part II of the Broadcasting Act 1990.

²⁰ See paragraphs 4.31 to 4.32.

²¹ Available at: <https://www.ofcom.org.uk/about-ofcom/annual-reports-and-plans>

Account Number: 00782415
Sort Code: 30 97 90

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

Remittances: ar@ofcom.org.uk

Telephone: 020 7783 4930

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

Annual licence fee

- 3.24 The licensee must pay an annual fee to Ofcom, as a condition of its licence. The fees are revised annually and published no later than 31 March of each year. The annual fees for editorial services are based on a percentage of 'Relevant Turnover', which in the Television sector relates to any turnover that is derived from advertising/sponsorship, subscriptions and interactive activities²². The minimum fee is currently £1,000 for the charging year.
- 3.25 A self-promotional service – which consists of a particular kind of advertising whereby the broadcaster promotes its own products, services or channels – is charged the minimum fee of £1,000 for the charging year.
- 3.26 For teleshopping services, there is a fixed annual fee. The current fixed fee for the charging year is £2,000.
- 3.27 For further information about fees, see Ofcom's Statement of Charging Principles²³, and Ofcom's Tariff Table²⁴.
- 3.28 It is important that licensees pay their annual licence fees on time. If fees are not paid by the date stated in the invoice, Ofcom is likely to investigate whether a breach of the relevant licence condition has occurred and may consider whether to impose a financial penalty and/or to revoke the licence.
- 3.29 If you wish to pay your annual fee by direct debit, please enclose a direct debit form with the application²⁵.

²² Please refer to Ofcom's Statement of Charging Principles (Annex B, pages 17 to 43) for further details: https://www.ofcom.org.uk/_data/assets/pdf_file/0019/51058/charging_principles.pdf

²³ Available at: <http://stakeholders.ofcom.org.uk/consultations/socp/statement/>

²⁴ Available at: <https://www.ofcom.org.uk/about-ofcom/annual-reports-and-plans>

²⁵ Our direct debit mandate form is available at: <http://licensing.ofcom.org.uk/binaries/tv/ddi-mandate.pdf>

Completing your application form

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

Applicant's contact details

- 4.1 In this section, you must insert the contact details of the applicant company along with the company number, where applicable. In most cases this will be a limited company, although it could be another type of organisation, or an individual.
- 4.2 Providing correct contact information is important as Ofcom needs to know precisely who to contact at the applicant company for various matters if a licence is granted. See paragraphs 2.34 to 2.37 of our DTPS/DTAS Guidance notes for licensees²⁶ for more details on provision of information to Ofcom.
- 4.3 The applicant is asked for contact details for the following contacts:
- **Licence contact:** The Licence Contact is the day-to-day contact for Ofcom on licensing matters. Examples of the type of communication between the Licence Contact and Ofcom could be questions regarding ownership of the licensee company; changes to the licence; and responding to information requests.
 - **Billing/Finance contact:** Contact details for Ofcom regarding invoicing/payment of annual licence fees.
 - **Market Intelligence Data contact:** Contact details for Ofcom regarding submission of 'market intelligence data'. This is information that Ofcom requests from its licensees every year, including information about the service's turnover (used to calculate subsequent licence fees) and any European productions.
 - **Public contact:** Contact details for publication on the Ofcom website and/or in other relevant Ofcom publications. When a licence is granted, the name of the service, contact details for the licensee and a brief description of the licensed service are published on the Ofcom website.
- 4.4 If you are completing the form as an agent, i.e. you are acting on the applicant company or individual's behalf, please refer to paragraph 3.5. If we require further information, our questions will be directed to the applicant, not the agent.

Jurisdiction of the applicant

- 4.5 The Audiovisual Media Services Directive²⁷ provides for freedom of retransmission and reception for television services within the European Economic Area. A service which is licensed (or otherwise appropriately authorised) in one Member State does not need separate licensing in any other Member State. Dual licensing is not permitted.

²⁶ Available at:

https://www.ofcom.org.uk/data/assets/pdf_file/0023/44825/dtps_dtas_guidance_notes_for_licensees.pdf

²⁷ The Audiovisual Media Services Directive (Directive 2010/13/EU) is available at:

http://ec.europa.eu/avpolicy/reg/avms/index_en.htm

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

Primary establishment criteria

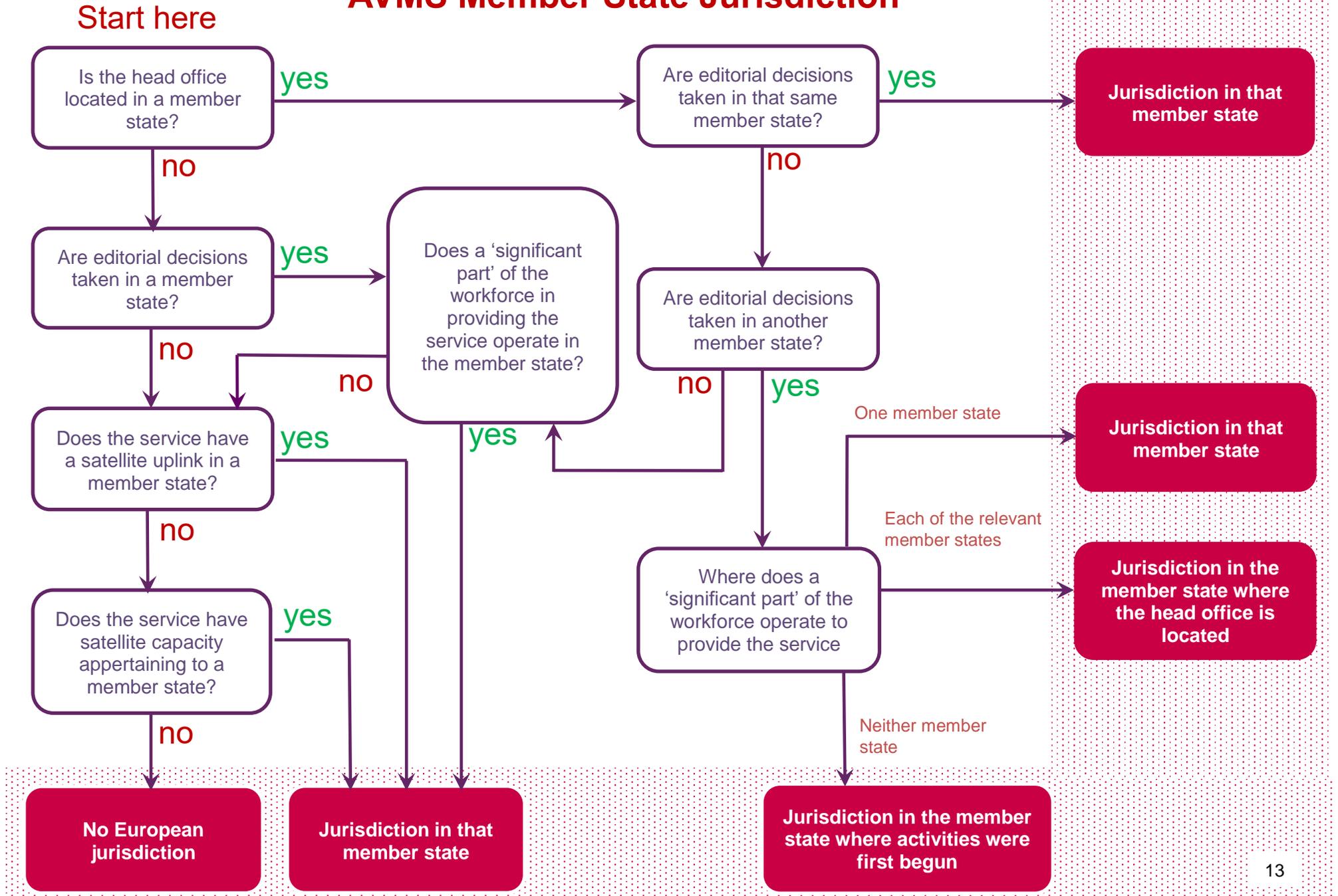
- 4.9 The Audiovisual Media Services Directive states that a broadcaster is established in a Member State (i.e. falls into its jurisdiction) in the following circumstances:
- If a broadcaster has its head office in that Member State and the editorial decisions about programme schedules are taken in that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

Subsidiary technical criteria

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

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

AVMS Member State Jurisdiction



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

Ownership restrictions

- 4.13 The Broadcasting Act 1990²⁸ lays down a number of restrictions on who may hold Ofcom's broadcasting licences. The following are among those who are disqualified from holding a DTPS/DTAS licence or from controlling a licensed company²⁹:
- a local authority³⁰;
 - a political body;
 - a religious body, other than where Ofcom is satisfied that it is appropriate for a particular person to hold a licence and makes a determination to that effect. If you wish to seek such a determination, please consult the Ofcom Guidance for religious bodies applying for a Broadcasting Act licence³¹;
 - any company controlled by any of the above or by their officers or associates;
 - an advertising agency or any company controlled by such an agency or in which it holds more than a 5 per cent interest³².
- 4.14 Please note that in accordance with the Broadcasting Act 1990 (as amended) Ofcom has the power to determine that in certain circumstances a person with less than a 50 per cent share can be deemed to control a company.
- 4.15 If information is relevant to determining whether an applicant is a disqualified person, it is an offence for the applicant to supply false information or to withhold information with the intention of misleading Ofcom. If a person is convicted in such cases, the court may make an order disqualifying the applicant from holding a licence for a specified period. A disqualification order applies to both the individual concerned and to any company of which he or she is a director or involved in the management of (whether directly or indirectly).

Eligibility requirements

- 4.16 Ofcom is required by law to consider whether a person is "fit and proper"³³ to hold a licence. This is done on a case-by-case basis. In determining whether

²⁸ As amended by the Broadcasting Act 1996 and the Communications Act 2003.

²⁹ In accordance with the Broadcasting Act 1990 (as amended).

³⁰ Except where the service is provided exclusively for the purposes of carrying out the functions of a local authority under Section 142 of the Local Government Act 1972 (as amended) provision by local authorities of information relating to their activities.

³¹ Available at: https://www.ofcom.org.uk/manage-your-licence/tv-broadcast-licences/guidance-for-tv-broadcast-licensees/_recache

³² According to the Broadcasting Act 1990 (as amended), an "advertising agency" means an individual or body corporate who carries on business as an advertising agent involved in the selection and purchase or advertising time or space for the person who wishes to advertise (section 202 (7) of the 1990 Act).

³³ Under section 3 of the Broadcasting Acts 1990 and 1996.

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

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

The proposed service

Name of the licensed service

- 4.17 The applicant chooses the name for their proposed service. It is the responsibility of the applicant to ensure the name can be used³⁴. Ofcom considers the proposed name of a service in an application to the extent that it may be relevant to the licensing criteria. This could concern, for example, matters relating to the Ofcom Broadcasting Code, such as the use of explicit language that viewers may find offensive.
- 4.18 It is the responsibility of the applicant to enter into agreements with the appropriate copyright licensing bodies before commencing broadcasting. The granting of a licence does not constitute a right to use a particular name.

Methods of delivery

- 4.19 A DTSPS/DTAS licence is only valid for delivery on DTT. If your service will be delivered via cable, satellite, internet, mobile phone or other technology, you should apply for a TLCS licence³⁵.

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

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

³⁴ Ofcom’s statutory remit does not extend to intellectual property matters, and it is for you to satisfy yourself that the proposed name of the service will not cause problems, from your own point of view, with (for example) a similar name for an existing service.

³⁵ Available at: <https://www.ofcom.org.uk/manage-your-licence/tv-broadcast-licences/apply-for-a-tv-broadcast-licence>

Nature of the service

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

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

Editorial, teleshopping or self-promotional

4.24 There is only one form (respectively) of the DTPS and the DTAS licence. Each licence contains the same conditions which apply to the licensee throughout the licence period³⁶. Further information about some of the conditions with which licensees are required to comply is set out in our DTPS/DTAS Guidance notes for licensees³⁷.

4.25 Ofcom recognises three types of service which can be provided under a DTPS or DTAS licence:

- editorial;
- teleshopping; and
- self-promotional.

4.26 You must state, when applying for a DTPS or DTAS licence, what type of service you intend to provide.

4.27 You are advised to carefully consider the rules in the Code on the Scheduling of Television Advertising (“COSTA”)³⁸, as the type of service you choose to provide will affect how they apply to you, as well as what fee category applies to you.

- i. An **editorial service** is a “normal” programme service, with conventional programme material and scheduled advertising breaks. The majority of television channels (including electronic programme guides) fall within this category³⁹.
- ii. A **teleshopping service** is a service which consists of teleshopping. Teleshopping (also known as home shopping, advertorials, infomercials, etc.) is a particular form of advertising which includes the broadcast of direct offers to the public of the supply of goods or services in return for payment. Spot advertising is permitted on teleshopping services up to the same limits as for editorial services. Teleshopping services may not broadcast material (other than permitted spot advertising) which does not contain direct offers to the public. A teleshopping service may therefore not

³⁶ Available at: <https://www.ofcom.org.uk/manage-your-licence/tv-broadcast-licences/apply-for-a-tv-broadcast-licence> . See ‘Standard Form Licence’ for an example.

³⁷ Available at: https://www.ofcom.org.uk/data/assets/pdf_file/0023/44825/dtps_dtas_guidance_notes_for_licensees.pdf

³⁸ Available at: https://www.ofcom.org.uk/data/assets/pdf_file/0014/32162/costa-april-2016.pdf

³⁹ Editorial services are category B licences for the purposes of Ofcom’s Statement of Charging Principles.

contain any conventional programme elements such as news, sport, films, documentaries or drama, etc⁴⁰.

- iii. A **self-promotional service** consists of self-promotional material. This is a particular kind of advertising in which the broadcaster promotes its own products, services or channels. Spot advertising and teleshopping windows⁴¹ for other products and services are permitted on self-promotional services up to the same limits as for editorial services. Self-promotional services may not broadcast material (other than permitted advertising and teleshopping) which does not promote the broadcaster's own goods or services. A self-promotional service may not therefore contain any conventional programme elements such as news, sport, films, documentaries or drama, etc⁴².
- 4.28 Transactional gambling services⁴³ will be treated as providing a teleshopping service rather than editorial output and licensed accordingly. The same will apply to 'windows' of transactional gambling within an otherwise editorial service. Licensees should continue to be able to choose what output they wish to provide: specifically, whether they wish to provide a purely editorial gambling-themed service, rather than a teleshopping service, and be licensed accordingly. However to qualify as editorial, any such services should provide genuine programming and not include transactional gambling in which offers are made, express or implied, to viewers to participate in the services on screen.
- 4.29 If a service offers transactional gambling; the licence will not authorise the provision of transactional gambling content in the UK outside Great Britain where such content remains prohibited⁴⁴.
- 4.30 Interactive television services using premium rate telephone lines or text messages, for example adult chat, adult sex chat and psychic programming are categorised as teleshopping. The UK Code of Broadcast Advertising ("the BCAP Code") requires that these types of services are specifically licensed for the purpose⁴⁵. If you intend to include this programming as part of your proposed service, the annex to your licence will include a reference to the provision of such programming. If this is not detailed in the Annex of the licence, you will not be authorised to provide this type of programming.

⁴⁰ Teleshopping services are category E licences for the purposes of Ofcom's Statement of Charging Principles.

⁴¹ Teleshopping windows must be at least 15 minutes in duration.

⁴² Self-promotional services are category B licences for the purposes of Ofcom's Statement of Charging Principles.

⁴³ Typically, transactional TV gambling output offers roulette, card games and virtual horse and dog racing.

⁴⁴ For further information see:

<https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/other-guidance>

⁴⁵ Please refer to Rule 23.3.2 of the BCAP Code in relation to telecommunications based sexual entertainment services and Rule 15.5.2 of the BCAP Code rule in relation to services relying on belief systems such as astrology, tarot or other psychic services. See:

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

Broadcast content

- 4.31 The applicant must ensure that all content to be included in the proposed licensed service will be able to comply with the relevant codes including, but not limited to:
- the Ofcom Broadcasting Code (incorporating the Cross-promotion Code), which covers standards in programmes, sponsorship, product placement and fairness and privacy⁴⁶;
 - COSTA, which sets limits on the amount of advertising that can be transmitted (e.g. no more than 12 minutes per hour) and when advertising can be scheduled; and
 - the BCAP Code⁴⁷, which covers standards for the content of broadcast advertising.
- 4.32 You should refer to Ofcom's compliance checklist for TV broadcast content for further details of the codes and rules you should consider⁴⁸.

Compliance

- 4.33 The applicant must be able to adopt procedures that are acceptable to Ofcom for ensuring that the proposed licensed service will comply with the requirements of the licence, including complying with any direction issued by Ofcom. Such procedures may include:
- ensuring that there are sufficient staff, and that staff are of sufficient seniority. All staff should fully understand the licence requirements (including compliance with relevant codes and rules) and the programme and advertising standards that apply to the service; and
 - making arrangements for the adequate clearance of advertising.
- 4.34 Applicants should be aware that licensees must supply details of their compliance procedures to Ofcom, if we request them.
- 4.35 Before you apply for a licence it is important that you read our Compliance checklist for TV broadcast content⁴⁹. The checklist is intended to help applicants and new licensees understand the obligations and rules with which they must comply as a condition of their Ofcom licence to broadcast. Prospective licensees must be aware of the potential scope of their regulatory responsibilities so that robust compliance procedures can be planned and financed at an early stage.

⁴⁶ The Broadcasting Code and the associated guidance is available at: <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>.

⁴⁷ Available at: <http://www.cap.org.uk/Advertising-Codes/~media/Files/CAP/Codes%20BCAP%20pdf/The%20BCAP%20Code.ashx>

⁴⁸ Available at: https://www.ofcom.org.uk/data/assets/pdf_file/0031/35779/compliance_checklist_for_tv_broadcasters.pdf

⁴⁹ See footnote 47.

European production quotas (DTPS only)

- 4.36 The Audiovisual Media Services Directive requires that European productions should account for over 50% of the transmission hours (subject to certain exclusions) and European independent productions must account for at least 10% of transmission hours. Of these, an 'adequate proportion' must be programmes transmitted within five years of production.
- 4.37 The following are exempt from the requirements for European productions:
- services broadcasting programming entirely or substantially in a non-European Union language;
 - services which serve a local or regional audience, and do not form part of a national network; or
 - services which only broadcast news or sports event programming, games, teletext services or teleshopping.
- 4.38 For further information, please refer to the Ofcom Guidance on European production quotas⁵⁰.

Application form checklist

- 4.39 The application form must be accompanied by the supporting documentation. The application will not be processed until all the supporting documentation listed below has been received:
- A copy of the Memorandum and Articles of Association (or, if a body corporate without such, the nearest equivalent along with a translation, if it is not in English), together with copies of any resolution amending or updating them.
 - A copy of the last Annual Return (or if the entity is recently established such that it has not yet been required to make that return, a copy of all filing made to Companies House since incorporation).
 - The most recent accounts of the applicant (not applicable to recently established entities).
 - An organisational chart showing the ownership structure of the applicant company, including percentages for shares held in it and for shares held by it in other companies to which it is connected.
 - A letter of corroboration from the relevant multiplex provider with respect to your contractual arrangements for providing the intended DTPS/DTAS service.
 - An indicative schedule of the content of the proposed service.
 - A diagram detailing the applicant's proposed compliance structure.
 - A copy of gambling licence/permit (if applicable).
 - If you are an agent, a letter authorising you to act on the applicant's behalf.

⁵⁰ Available at: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/epq.pdf>

- The application fee of £2,500 payable by cheque made out to 'Ofcom' or BACS (if paying the application fee by BACS please submit a copy of the BACS remittance with your application).

Confidentiality requests

Publication of information about applications and licensed services

- 4.40 Please complete question 10.1 of the application form telling us if you consider any of the information you have provided is confidential. If an applicant asks us to keep part or all of an application confidential, we will treat this request seriously and will try to respect this. However, sometimes we will need to publish such applications, including those that are marked as confidential, in order to meet legal obligations, for example under the Freedom of Information Act 2000.
- 4.41 Ofcom is a Data Controller under the Data Protection Act 1998 and is committed to protecting and processing any personal information shared with us in a manner which meets the requirements of the Data Protection Act 1998 as outlined in the statement on our website at <https://www.ofcom.org.uk/about-ofcom/foi-dp/data-protection>.
- 4.42 When a licence is granted, the name of the service, contact details for the licensee and a brief description of the licensed service are published on the Ofcom website. These are the details supplied in the application form. If you have any questions about the information that we publish, or there are any changes to this information, you should contact the Television Broadcast Licensing team by email (tv.licensing@ofcom.org.uk) or telephone (020 7981 4056)
- 4.43 Additionally, Ofcom considers issued DTPS and DTAS licences to be public documents and will make copies of licences available to third parties on request.
- 4.44 Ofcom also publishes a monthly update which lists new services licensed, licences revoked, licence transfers, and changes to the name or nature of the licensed service during the past month. The licensing updates are available on our website⁵¹.

Data Protection

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

⁵¹ Available at: <https://www.ofcom.org.uk/manage-your-licence/tv-broadcast-licences/updates>.

Frequently asked questions

Q. How much does a licence cost?

A. The current application fee is £2,500 per application. This payment is non-refundable. Please see paragraphs 3.20 to 3.23 for further details. Once a licence has been issued, you will be required to pay an annual licence fee. The fees for editorial services are based on a percentage of 'Relevant Turnover', which in the television sector relates to any turnover that is derived from advertising/sponsorship, subscriptions and interactive activities⁵²; the minimum fee is currently £1,000 for the charging year. Self-promotional channels are charged the minimum fee. For teleshopping services, there is a fixed annual fee. The current fixed fee for the charging year has been set at £2,000. For further information on annual licence fees, please see paragraphs 3.24 to 3.29.

Q. How long does the licensing process take?

A. As a guideline, we aim to issue a licence within 25 working days. However, this cannot be guaranteed. For further information, please see paragraphs 3.12 to 3.19.

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

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

Q. Do I need a compliance officer?

A. Yes, Ofcom must be satisfied that the applicant will have appropriate procedures in place for ensuring that the proposed licensed service will comply with the requirements of the licence. Please see paragraphs 4.33 to 4.35.

Q. Can I provide a service without a DTPS/DTAS licence?

A. If your service meets the definition of a Digital Television Programme Service or Digital Television Additional Service as set out in paragraphs 2.1 to 2.5 above, you must have a DTPS/DTAS licence to broadcast.

If your service does not meet the definition of a DTPS/DTAS you must check whether it meets the definition of a TLCS set out in paragraph 2.6, or another licence type. Please see our website for information on the different types of licences available⁵³. It is a criminal offence to provide a licensable service without the appropriate licence.

⁵² Please refer to Ofcom's Statement of Charging Principles (Annex B, pages 17 to 43) for further details:

https://www.ofcom.org.uk/_data/assets/pdf_file/0019/51058/charging_principles.pdf

⁵³ Available at: <https://www.ofcom.org.uk/manage-your-licence/tv-broadcast-licences/apply-for-a-tv-broadcast-licence>

Q. Can I have an invoice for my DTPS/DTAS application?

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

You may also wish to read the DTPS/DTAS Guidance notes for licensees:
https://www.ofcom.org.uk/_data/assets/pdf_file/0023/44825/dtps_dtas_guidance_notes_for_licensees.pdf **which provides information about the licensing requirements and the conditions that licensees are subject to.**