



Consultation on proposed licence condition changes

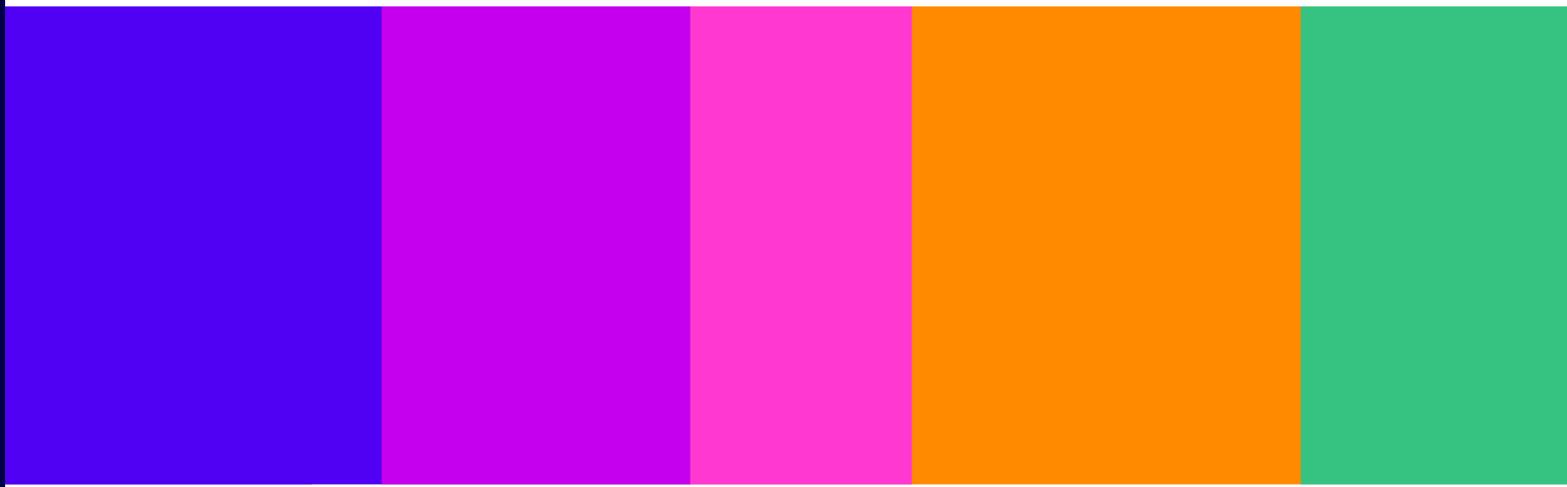
Consultation on proposed changes to the
conditions included in Digital Television
Additional Service licences

Welsh Version available

Consultation

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1. Overview

- 1.1 This consultation sets out changes that Ofcom is proposing to make to the conditions included in Digital Television Additional Service ('DTAS') licences. These services broadcast on digital terrestrial television multiplexes and usually consist of text or data services.
- 1.2 Some of the current conditions included in DTAS licences would benefit from being updated. This is in part because of the recent rise of internet delivered services available to UK viewers, where applying the current licence conditions is producing an outcome that could be confusing for viewers. There are also some administrative changes that we would like to introduce.
- 1.3 Section 3(4)(b) of the Broadcasting Act 1990 (the '1990 Act') allows Ofcom to make changes to the conditions of broadcast licences, and include new conditions, by varying the licences, provided licensees have been given a reasonable opportunity to make representations about the proposed variation. This consultation gives licensees the opportunity to do so.

What we are proposing – in brief

- To amend the licence condition 'third party content services' to set out that a warning is not required if the third party television service to which the licensee gives access holds an Ofcom issued broadcast licence.
- To add the 'third party content services' and 'content services proscribed by the Secretary of State' licence conditions to all DTAS licences so that, where possible, all DTAS licences contain the same conditions.
- To change a reference in the 'force majeure' licence condition from 'Queen' to 'King'.

Next steps

- 1.4 We are inviting comments and representations on the proposed changes by **5pm on 17 April 2024**.
- 1.5 Subject to consideration of the responses we receive, we will serve on all existing DTAS licensees a notice of the changes to their licences; varying the licences to make the changes that we propose in this consultation. We will also update the DTAS licence template with the changes we propose so that any new DTAS licences we grant will be issued using the new licence template.

2. Proposed changes

Background

- 2.1 Under section 4(1)(a) of the Broadcasting Act 1990 (the '1990 Act'), Ofcom has a duty to include in each broadcaster's licence the conditions that we think are appropriate to enable us to carry out our duties (and any duties imposed on licence holders) under the 1990 Act, the Broadcasting Act 1996 (the '1996 Act') or the Communications Act 2003 (the '2003 Act').
- 2.2 These include Ofcom's duties to secure:
- a) the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and designed to appeal to a variety of tastes and interests;
 - b) the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services; and
 - c) the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from both unfair treatment in programmes included in such services and unwarranted infringements of privacy resulting from activities carried on for the purposes of such services.
- 2.3 Under section 211 of the 2003 Act, Ofcom has a duty to regulate certain television services. This includes digital television additional services ('DTAS'), the licence type that is the subject of this consultation.
- 2.4 Some of the current conditions included in DTAS broadcast licences would benefit from being updated. This is in part because of the recent rise of internet delivered services available to UK viewers, where applying the current licence conditions is producing an outcome that could be confusing for viewers. There are also some administrative changes that we would like to introduce. This section of the consultation sets out the changes we propose to make.
- 2.5 Section 3(4)(b) of the 1990 Act allows Ofcom to make changes to the conditions of broadcast licences, and include new conditions, by varying the licences, provided licensees have been given a reasonable opportunity to make representations about the proposed variation. This consultation gives licensees the opportunity to do so.

What are DTAS services?

- 2.6 Digital Television Additional Services (DTAS) are services that are broadcast on a digital terrestrial television (DTT) multiplex. DTT is more commonly known as Freeview, and a multiplex is a way of broadcasting several television, radio and data services using a digital signal.
- 2.7 The definition of a DTAS is set out in [section 24 of the 1996 Act](#). They are services that usually consist of text or data services. As an example, DTAS services are used to broadcast software that allows a viewer watching an internet connected TV to connect to the internet and watch internet delivered TV channels, usually provided by third parties, such as the software that takes viewers to services like Channelbox and Vision from the Freeview

Electronic Programme Guide ('EPG'). The DTAS in this example is the software that sits in the DTT broadcast stream and acts as the link between DTT and the internet, not the internet delivered TV channels. These types of DTAS are sometimes referred to as 'portal' services.

What licences does Ofcom issue?

- 2.8 Ofcom issues DTAS licences, two templates of which we publish [on our website](#). DTAS licensed services are text or data services that are broadcast, such as the software in the example given above.
- 2.9 Ofcom also issues licences for services that broadcast television programmes. These television services will require a [Digital Television Programme Service \(DTPS\) licence](#) if they broadcast on DTT, and a [Television Licensable Content Service \(TLCS\) licence](#) if they broadcast using satellite or cable.
- 2.10 Television services delivered over the internet will hold a TLCS licence if the service can be accessed by means of a UK Regulated EPG. Internet delivered television services that are accessed via a portal menu do not require a TLCS licence.

What are we proposing to change?

When a warning needs to be shown

- 2.11 We are seeing an increasing number of internet delivered television services available to viewers in the UK. Some of these services are available via DTT, where a service holding a DTAS licence broadcasts software that takes the viewer from DTT to the internet delivered television service. If the internet delivered television service can be accessed by means of a regulated EPG, for example it has its own channel number, then the software provider will hold a DTAS licence and the television service provider will hold a TLCS licence.
- 2.12 It is a condition of DTAS licences that give access to third party television services that they must display a warning letting the viewer know that they are about to view material delivered over the internet, which may not be regulated in the same way as other television services, and advising the viewer to exercise caution. This is captured in licence condition 22A 'third party content services'. The requirement of this licence condition is one of the ways in which Ofcom protects audiences from content that may potentially be harmful.
- 2.13 The licence condition sets out that a warning does not need to be displayed if the service is within the jurisdiction of, and therefore regulated by, an EEA Member State. The reason why there is an exception for services regulated elsewhere in Europe is because there are shared minimum standards for television content across Europe and the UK. These shared minimum standards act to protect viewers from potential harm.
- 2.14 The UK is no longer an EEA Member State, and so the current wording of the licence condition means that a warning must be displayed even if the television service is licensed by Ofcom and is therefore subject to our comprehensive content standards rules. We recognise it could be confusing for viewers to see a message warning them that the service they are about to view may not be regulated in the same way as other television services, when in fact the service is licensed by Ofcom and therefore regulated in the same way as other Ofcom licensed services. We also note that it could be frustrating for the television service providers as a viewer may choose not to watch their service as a result of the

warning, despite that service being subject to the same rules as other Ofcom licensed services which do not need to display a warning.

- 2.15 Given that we are now seeing internet delivered television services appearing on regulated EPGs and holding TLCS licences, we consider that it is an appropriate time to update the ‘third party content services’ licence condition so that, in addition to the existing exceptions, a warning also does not need to be displayed if the television service holds a broadcast licence issued by Ofcom. The effect of this proposal is that there will be fewer occasions on which a warning needs to be displayed. The full licence condition is set out in Annex 1, with the text we propose to remove ~~struck through~~ and proposed addition **in bold**.

Consultation question 1:

Do you have any comments on Ofcom’s proposed changes to the ‘third party content services’ licence condition to set out that a warning does not need to be displayed if the third party television service being accessed holds an Ofcom issued broadcast licence?

Adding conditions 22A and 22B to all DTAS licences

- 2.16 Various different types of text and data services are provided under DTAS licences. For example, some licensed DTAS services are applications which allow the viewer to access other content, some are Electronic Programme Guides (EPGs), and some are other types of software. As a result, Ofcom has issued different DTAS licences with slight variations in the conditions they contain, depending on the exact nature of the licensed service. Broadly, licences for services that give access to third party television services contain additional licence conditions - condition 22A ‘third party content services’ and condition 22B ‘content services proscribed by the Secretary of State’ - but there are variations across the licence templates.
- 2.17 To ensure a consistent approach for DTAS licensees, and for administrative reasons, we are proposing to add licence conditions 22A and 22B to all DTAS licences so that, as far as possible, all DTAS licensees will hold licences that contain identical conditions. Section 24A of the 1996 Act requires Ofcom to do all that it considers appropriate to prevent digital additional services from enabling members of the public to access “seriously harmful extrinsic material”. Seriously harmful extrinsic material means material that is not included in the DTAS and appears to Ofcom (i) to have the potential to cause serious harm, or (ii) to be likely to encourage or incite the commission of crime or lead to disorder. Licence conditions 22A and 22B act to inform Ofcom of the services to which DTAS licensees are enabling access and require licensees to take certain steps should seriously harmful material become accessible to members of the public.
- 2.18 These conditions will only apply to the extent that the licensed service provides access to third party content services. Licence conditions 22A and 22B are set out in Annex 1.

Consultation question 2:

Do you have any comments on Ofcom’s proposed changes to add conditions 22A and 22B to all DTAS licences?

Updating the force majeure licence condition

- 2.19 A ‘force majeure’ condition is included in all DTAS licences. This provides that the licence holder is not responsible for any breach of a licence condition that occurs due to circumstances beyond their reasonable control. The condition includes a reference to “*the Queen’s enemies*”, and we are proposing to take this opportunity to update it to “*the King’s enemies*”. The full licence condition is set out in Annex 1, with the text we propose to remove ~~struck through~~ and proposed addition **in bold**.

Consultation question 3:

Do you have any comments on Ofcom’s proposed changes to the ‘force majeure’ licence condition?

Next steps

- 2.20 We are inviting comments and representations on the proposed changes by **5pm on 17 April 2024**.
- 2.21 Subject to consideration of the responses we receive, we will serve on all existing DTAS licensees a notice of the changes to the licences; varying the licences to make the changes that we propose in this consultation. We will also update the DTAS licence template with the changes we propose so that any new DTAS licences we grant will be issued using the new licence template.

A1 Proposed licence conditions

- A1.1 We are proposing to include conditions 22A and 22B in the form set out below in all DTAS licences. We are also proposing to make some changes to the wording of condition 22A and to condition 23. The changes we are proposing are set out below, with the text we propose to remove ~~struck through~~ and proposed addition **in bold**.
- A1.2 We have also published on the [webpage for this consultation](#) the full DTAS licence template that we are proposing. New additions are presented **in bold and highlighted**, and any wording we are proposing to remove is ~~struck through~~.

22A. Third party content services

- (1) The Licensee shall not enter into an agreement with any person who is providing access, either directly or indirectly, to a content service which contains material equivalent to the British Board of Film Classification’s R-18 rating, material constituting “adult sex material” as defined in the Standards Code or material advertising telecommunications-based sexual entertainment services as defined in the UK Code of Broadcast Advertising (“adult sex chat”), save as provided in paragraphs (2) and (3) below.
- (2) The Licensee may only enter into an agreement with a person providing access, either directly or indirectly, to a linear content service containing “adult sex material”, where that service is licensed by Ofcom or ~~another~~ **an** Member State of the European Economic Area (“EEA”).
- (3) The Licensee may only enter into an agreement with a person providing access, either directly or indirectly, to a linear content service containing “adult sex chat”, where that service is licensed by Ofcom or ~~another~~ **an** EEA Member State.
- (4) The material in paragraphs (2) and (3) shall be referred to as the “regulated adult material”.
- (5) The Licensee shall not enable access, either directly or indirectly, to a content service which contains material that has the potential to cause serious harm, or is likely to encourage or incite the commission of crime or lead to disorder.¹
- (6) If the Licensee becomes aware that a content service which contains (a) material equivalent to the British Board of Film Classification’s R-18 rating or otherwise constitutes “adult sex material” or “adult sex chat”, which is not regulated adult material, or (b) material that has the potential to cause serious harm, or is likely to encourage or incite the commission of crime or lead to disorder, is accessible through the Licensed Service, it shall do all it can to ensure that the content service ceases to be accessible through the Licensed Service as a matter of urgency.

¹ Currently, Condition 22A in some DTAS licences does not include this sub-condition.

- (7) Subject to Condition 22A(1), where the Licensee has an agreement with a content provider or providers to enable their content service(s) to be accessed through the Licensed Service, the Licensee shall display, prominently and for a minimum duration of five seconds, a warning screen before each occasion that the viewer accesses the content service(s) specified in (8) below. This warning screen must notify the viewer that they are about to view material delivered over the internet, which may not be regulated in the same way as television content, and advise the viewer to exercise caution. A screenshot of the warning text on-screen must be provided to Ofcom for approval at least 10 working days prior to its first use. Ofcom may require the warning text to be varied, including so that it gives details of a website address for further information, which shall be notified to the Licensee from time to time.
- (8) Condition 22A(7) applies when the content service which can be accessed through the Licensed Service (or at least one of the content services which can be accessed, where a provider provides more than one) is:
- (a) **not licensed by Ofcom, and is** outside the jurisdiction of an EEA Member State for the purposes of the Audiovisual Media Services Directive and is therefore not regulated by any such Member State; or
- (b) an on-demand programme service, as defined in the Communications Act, which has not been notified to Ofcom.

22B. Content services proscribed by the Secretary of State

- (1) The Licensee shall not enter into an agreement with any person who is providing access, either directly or indirectly, to a content service which has been proscribed by the Secretary of State.
- (2) If the Licensee becomes aware that a content service which is proscribed by the Secretary of State is accessible through the Licensed Service, it shall do all it can to ensure that the content service ceases to be accessible through the Licensed Service as a matter of urgency.

23. Force majeure

Section 4(1)(d) of the 1996 Act

The Licensee shall not be in any way responsible for any failure to comply with any Conditions of this Licence directly or indirectly caused by or arising from any circumstances beyond the reasonable control of the Licensee including (without limitation) war, damage by the ~~Queen's~~**King's** enemies, terrorism, riot, rebellion, civil commotion, interference by strike, lockout, sit-in, picket or other industrial dispute or action.

A2 Responding to this consultation

How to respond

- A2.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 17 April 2024.
- A2.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-1/proposed-licence-condition-changes>. You can return this by email or post to the address provided in the response form.
- A2.3 If your response is a large file, or has supporting charts, tables or other data, please email it to DTASlicenceconditionchanges@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet. This email address is for this consultation only and will not be valid after 17 April 2024.
- A2.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Consultation on proposed licence condition changes
Broadcast Licensing Team
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A2.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files; or
 - upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A2.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A2.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt of a response submitted to us by email.
- A2.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A2.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex X. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A2.10 If you want to discuss the issues and questions raised in this consultation, please leave a voicemail for the Broadcast Licensing Team on 0207 981 3002 and the team will call you back, or by email to DTASlicenceconditionchanges@ofcom.org.uk.

Confidentiality

- A2.11 Consultations are more effective if we publish the responses before the consultation period closes. This can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish responses on the Ofcom website at regular intervals during and after the consultation period.
- A2.12 If you think your response should be kept confidential, please specify which part(s) this applies to and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A2.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A2.14 To fulfil our pre-disclosure duty, we may share a copy of your response with the relevant government department before we publish it on our website.
- A2.15 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our Terms of Use.

Next steps

- A2.16 Following this consultation period, Ofcom plans to publish a statement in Spring 2024.
- A2.17 If you wish, you can register to receive mail updates alerting you to new Ofcom publications.

Ofcom's consultation processes

- A2.18 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 3.
- A2.19 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A2.20 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:
- A2.21 Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A3 Ofcom's consultation principles

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

Before the consultation

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

During the consultation

A3.2 We will be clear about whom we are consulting, why, on what questions and for how long.

A3.3 We will make the consultation document as short and simple as possible, with an overview of no more than two pages. We will try to make it as easy as possible for people to give us a written response.

A3.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.

A3.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.

A3.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

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

A4 Consultation coversheet

Basic details

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

Confidentiality

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

- Nothing
- Name/contact details/job title
- Whole response
- Organisation
- Part of the response

If you selected 'Part of the response', please specify which parts:

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

Yes No

Declaration

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

Ofcom aims to publish responses at regular intervals during and after the consultation period. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

A5 Consultation questions

A5.1 There are three questions that we are consulting on:

Consultation question 1:

Do you have any comments on Ofcom's proposed changes to the 'third party content services' licence condition to set out that a warning does not need to be displayed if the third party television service being accessed holds an Ofcom issued broadcast licence?

Consultation question 2:

Do you have any comments on Ofcom's proposed changes to add conditions 22A and 22B to all DTAS licences?

Consultation question 3:

Do you have any comments on Ofcom's proposed changes to the 'force majeure' licence condition?

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