

CONSULTATION LETTER SENT TO ALL HOLDERS OF LICENSABLE SOUND PROGRAMME SERVICE LICENCES ON 19 SEPTEMBER 2003

Copies of the 'marked-up' version of the proposed RLCS licence referred to in this letter are available by request. Please contact Gwen Morgan on 020 7887 4384.

A. Consultation on Amendments proposed to be made to your Licensable Sound Programme Service Licence

1. As a result of the entry into force of Section 251 (3) of the Communications Act 2003 (the "Act") your current licensable sound programme service licence will automatically become a radio licensable content service licence (as defined in the Act).
2. In accordance with its duty under Section 251 (4) of the Act, Ofcom intends to vary your licence by means of a notice of variation. In particular, it is proposed that the notice of variation will make amendments to the front page of your licence and replace Annexes 1 to 3 of your licence with a schedule of conditions (the "Schedule"). The proposed amendments reflect changes to the regulatory regime brought about by the Act* and, so far as is possible within the provisions of the regulatory regime, attempt to ensure consistency across all classes of Ofcom licences, both for television and radio services. Overall, the proposed amendments will result in your licence to all intents and purposes being identical to the standard form radio licensable content service licence (the "RLCS licence") which Ofcom will issue to all new radio licensable content service licensees. The notice of variation, which will be issued following completion of the consultation process, will come into effect on the date of commencement of the relevant statutory provisions (expected to be 29 December 2003), from which date you must comply with the terms and conditions of your licence as amended by the notice of variation.
3. Under Condition 18 of Part I of Annex 2 of your licence, and in accordance with Section 86 (5) of the Broadcasting Act 1990 (the "1990 Act"), your licence cannot be varied unless you have been given a reasonable opportunity to make representations concerning the proposed variations. Please note that, as a result of Section 251 (3) of the Act, notwithstanding the terms and conditions of your licence, it will continue in force until it is surrendered or revoked. You will therefore find enclosed with this letter a copy of the proposed RLCS licence, both in 'clean' form and in 'marked-up' form showing changes from the current standard form licensable sound programme service licence. Please submit any representations you may have on the amendments proposed to be made to your licence to Peter Bourton at Ofcom by 27 October 2003.

* A copy of the Act can be downloaded from www.legislation.hmso.gov.uk or purchased from The Stationery Office Ltd (TSO).

4. This consultation process is concurrently taking place with both current satellite service licensees and current licensable sound programme service licensees. We will consider all the representations received from these licensees by 27 October 2003 prior to finalising the RLCS licence.
5. You will find below a description of some of the amendments that Ofcom proposes to make to your licence by the notice of variation (as described above at point 2, the Schedule to the notice of variation will be identical to the Schedule to the RLCS licence). Please note that this description is only illustrative and is not exhaustive: it is only an indication of certain amendments which may affect your current rights and obligations. The fact that a provision has been crossed out in the 'marked-up' form of the proposed RLCS licence does not necessarily mean that it has been omitted, as it may be found elsewhere in the proposed RLCS licence. Furthermore, the fact that a provision has been deleted does not necessarily mean that it is no longer enforceable. It may still be enforceable under another licence condition or by other means such as a code of practice. It is your responsibility to read the proposed RLCS licence carefully, and take appropriate legal advice, if necessary, to determine how your licence as amended by the notice of variation would affect your business.
6. When making representations about the proposed amendments, please note that Ofcom is obliged by the Act to make certain amendments to your licence. Representations are therefore sought on areas where Ofcom will be able to exercise some discretion in its interpretation of the statutory provisions and in the drafting which is used to incorporate those provisions in the RLCS licence.

B. General and/or Minor Amendments to your Licence

7. Ofcom proposes to make some general and/or minor amendments to your licence. For example, as a result of the entry into force of the relevant provisions of the Act, references to the Radio Authority and the Broadcasting Standards Commission will be replaced by references to Ofcom. To ensure consistency with all classes of licences granted by Ofcom, references to the provision by you of a "Programme Service" will be replaced by references to a "Licensed Service" (the service which you provide under your licence, as detailed in Annex 4 of your licence, will not change), the order and headings of some of the conditions in your licence will be changed and some minor variations will be made to the text of some of the conditions. The conditions in your licence will be included in a Schedule (rather than, as presently, in a number of Annexes) and an Annex will record the description of the service you provide (presently Annex 4 of your licence).

C. Main Amendments to your Licence

Term of your licence

8. You are currently authorised to provide the programme service (as defined in your licence) for a period of five years. As a result of the entry into force of the relevant provisions of the Act, and in particular Section 251 (3) of the Act, you will be authorised to provide this service for so long as your licence remains in force. Certain provisions and conditions of your licence will reflect this change. See, for example, new Condition 23 (Surrender) and the amendments to what will become paragraph 4 on the front page of, and Conditions 2 (Provision of radio licensable content service by Licensee) and 28 (Sanctions for breach of Condition) of the Schedule to, the proposed RLCS licence.

Electronic communications networks and services and the Technical Code

9. It is proposed that your licence be amended by the insertion of references to compliance with any requirement to hold or have held on your behalf a licence under Section 1 of the Wireless Telegraphy Act 1949, the Technical Code (as defined in the proposed RLCS licence) to the extent it applies to you and the requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (see paragraph 3 on the front page of, and Conditions 2 (2) and 29 (2) (e) of the Schedule to, the proposed RLCS licence).

Deregulation and Contracting Out Act 1994

10. The Act (Section 1 (7)) allows the functions conferred on Ofcom to be contracted out under the Deregulation and Contracting Out Act 1994 (the “DCO Act”). It is proposed that your licence be amended to include a reference to this in Condition 1 (6), so that in the event that an Order is made under the DCO Act authorising a person to exercise any functions of Ofcom, relevant references in your licence to Ofcom will include a reference to that person.

Fees

11. It is proposed that the wording of the condition in relation to fees (see Condition 3 of the Schedule to the proposed RLCS licence) be amended to facilitate Ofcom's use of its discretion to alter present arrangements.

V.A.T.

12. It is proposed that a new condition in relation to V.A.T. be included in your licence (see Condition 4 of the Schedule to the proposed RLCS licence). You should note that V.A.T. is not currently chargeable on licence fees and there is no current intention for it to become chargeable on licence fees.

Compliance with certain standards and requirements

13. As a result of the entry into force of the relevant provisions of the Act, new conditions in relation to general standards and requirements and advertising and sponsorship standards and requirements (see Conditions 5 and 6 of the Schedule to the proposed RLCS licence) are proposed to replace Conditions 3 and 4 of Part I of Annex 2 of your licence. Under these proposed conditions you would therefore need to comply with a number of general standards and specific advertising and sponsorship standards and observe the provisions of the Standards Code (as defined in the proposed RLCS licence). In particular, you should note Condition 6 (3) of the Schedule to the proposed RLCS licence which describes what is considered ‘political’ in the context of advertising and sponsorship requirements. You should also note that there are specific licence conditions which refer to the requirement to maintain a proper separation between advertising and programming, and compliance with the ICSTIS code on premium rate telephone services. There is also a provision requiring compliance with Ofcom's rules on alcohol advertising.

Provision of additional services

14. As a result of the entry into force of the relevant provisions of the Act, a new condition in relation to the provision of additional services will be included in your licence (see Condition 7 of the Schedule to the proposed RLCS licence).

Provision of information to Ofcom

15. In addition to your current information obligations, it is proposed that you be required to provide information for Ofcom to determine whether you are a disqualified person by virtue of Schedule 2 to the 1990 Act or in holding your licence you contravene requirements imposed by or under Schedule 14 to the Act. You would also be required to inform Ofcom if you, or your parent company, suffers an insolvency-type event or if you, or any individual having control over you (as defined in that condition), is sentenced to a term of imprisonment on conviction of a criminal offence. You would also be obliged to inform Ofcom if judgment is awarded against you in any court proceedings brought against you in respect of the inclusion in the licensed service of a number of specified matters (see Condition 9 of the Schedule to the proposed RLCS licence).
16. It is proposed that the condition in relation to provision of information on change of control be amended (see Condition 10 of the Schedule to the proposed RLCS licence).

Fair and effective competition

17. Further to section 316(1) of the Act, Condition 8 of Part 1 of Annex 2 of your licence in relation to fair and effective competition will be varied. The revised condition differs from the existing one in that it obliges you not to do anything which is prejudicial to fair and effective competition. In addition it requires you to

comply with any code or guidance (as well as any direction) issued by Ofcom for the purposes of ensuring fair and effective competition. The Ofcom Board considers that it would be more appropriate to vary the licence in this way than proceed under the Competition Act 1998. The Competition Act does not in itself enable a variation to a licence condition. In particular, your existing condition already provides for *ex ante* competition regulation and the variation enables such regulation to be carried out in a broad and flexible manner, consistent with Ofcom's duty under the Communications Act to promote competition. The variation also provides clarity in specifying that any codes or guidance on competition matters are directly enforceable by Ofcom (subject to the provisions set out in section 317 of the Act). Ofcom also considers it relevant that in any event before taking enforcement action under this condition, it would then need to consider whether, in the circumstances, proceeding under the Competition Act would be more appropriate. The substance of the new condition is consistent with that contained in other, existing Broadcasting Act licences and Ofcom is seeking to vary all licences so that the condition relating to competition is expressed in identical terms. For the avoidance of doubt, you are hereby notified under the provisions of section 317(5) of the Act that you may appeal a decision to make this variation to the Competition Appeal Tribunal.

Compliance

18. As a result of the entry into force of the relevant provisions of the Act, it is proposed that Condition 10 (Restrictions on the interests held in other media services) of Part I of Annex 2 of your licence be amended to include obligations in relation to Schedule 14 to the Act (see Condition 13 of the Schedule to the proposed standard form licence).
19. It is proposed that Conditions 5 (Copy clearance) and 12 (Obligation to comply with directions issued by the Authority) of Part I of Annex 2 of your licence be replaced with a new condition in relation to compliance (see Condition 15 of the Schedule to the proposed RLCS licence).

Powers of inspection

20. It is proposed that a new condition in relation to Ofcom's powers of inspection be included in your licence (see Condition 17 of the Schedule to the proposed RLCS licence).

Standards complaints

21. As a result of the entry into force of the relevant provisions of the Act, it is proposed that Condition 15 (Complaints) of Part I of Annex 2 of your licence be replaced with a new condition in relation to standards complaints (see Condition 18 of the Schedule to the proposed RLCS licence). Although not yet finalised, work is currently underway to establish co-regulatory mechanisms for handling

advertising standards complaints. This may involve an Order being made under the DCO Act (see point 10 above).

Fairness complaints

22. As a result of the entry into force of the relevant provisions of the Act, it is proposed that Condition 16 (The Broadcasting Standards Commission) of Part I of Annex 2 of your licence be amended including, for example, an obligation to comply with certain information requests from Ofcom and to observe the Fairness Code (as defined in the RLCS licence) (see Condition 19 of the Schedule to the proposed RLCS licence).

Publicising Ofcom's functions

23. As a result of the entry into force of the relevant provisions of the Act, it is proposed that a new condition in relation to publicising Ofcom's functions be included in your licence (see Condition 20 of the Schedule to the proposed RLCS licence).

Equal opportunities and training

24. As a result of the entry into force of the relevant provisions of the Act, it is proposed that a new condition in relation to equal opportunities and training be included in your licence (see Condition 24 of the Schedule to the proposed RLCS licence). For example, companies which, individually, have over twenty employees or are part of a group having in aggregate over twenty employees, would be expected to make arrangements to promote, in relation to employment with the licence holder, the equalisation of opportunities for disabled persons.

Interest on late payments

25. It is proposed that Condition 2 (6) of Annex 3 of your licence be replaced with a new condition in relation to interest on late payments (see Condition 26 of the Schedule to the proposed RLCS licence).

Sanction for breach of licence conditions

26. It is proposed that amendments be made to Condition 2 (Sanctions for breach of Condition) of Annex 3 of your licence (see Condition 28 of the Schedule to the proposed RLCS licence). For example, the amount of the financial penalty that can be imposed by Ofcom for breach of a licence condition would be increased from £50,000 to £250,000 (note that the Secretary of State will still be able to specify another sum by order; see Condition 28 (2) (b) of the Schedule to the proposed RLCS licence). However, please note that breaches committed before the coming into force of the new financial penalty provisions in the Act would attract fines at the current statutory level.

Revocation

27. It is proposed that amendments also be made to Condition 3 (Revocation) of Annex 3 of your licence (see Condition 29 of the Schedule to the proposed RLCS licence). In particular, you should note that Ofcom may revoke your licence if the holding of your licence contravenes a requirement imposed by or under Schedule 14 to the Act. You should also note that although the wording in Conditions 3 (2) (c) and (g) of Annex 3 of your licence would no longer be included in the new condition on revocation, Ofcom envisages that the occurrence of any of these events (broadly insolvency-type events and failure to make payment on the due date) would still be caught by the condition.

Yours faithfully,

Kip Meek
Senior Partner, Content and Competition