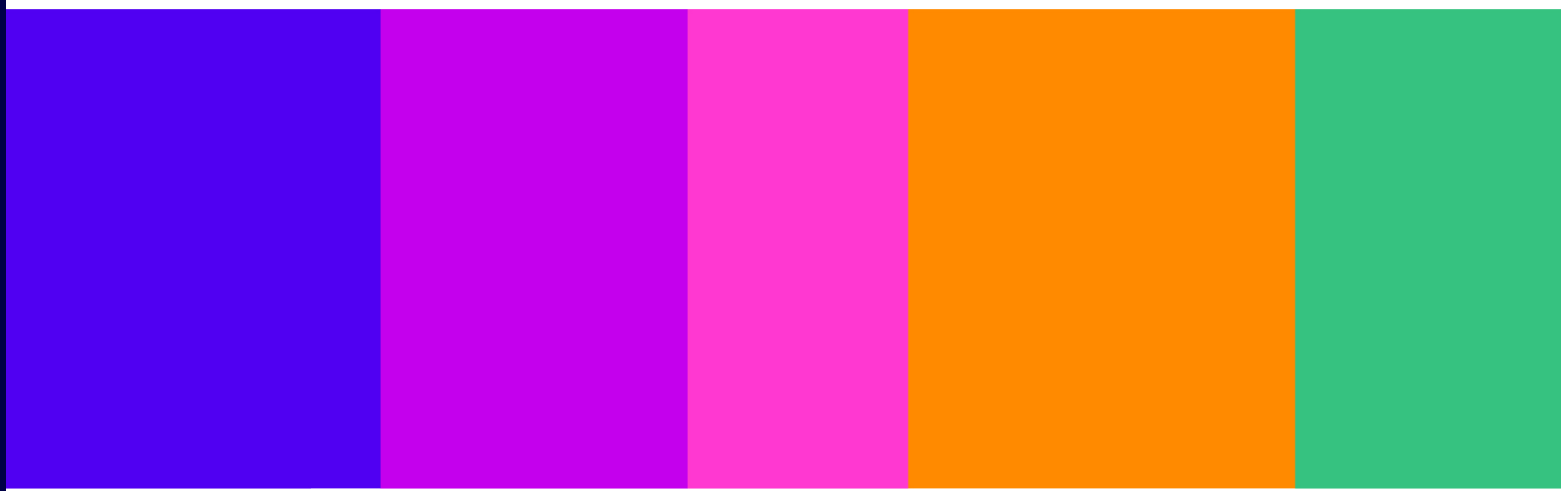


Statement on changes to licence conditions

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

Statement

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1. Overview

- 1.1 This document sets out changes that Ofcom is making 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 We explained in [our consultation](#) that 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 said we would like to introduce.
- 1.3 Section 3(4)(b) of the Broadcasting Act 1990 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. Our consultation gave licensees the opportunity to do so.
- 1.4 Having taken account of the two responses to our consultation that we received, we set out our decisions in this document.

What we have decided – 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'.

2. Introduction

What are DTAS services?

- 2.1 Under section 211 of the Communications Act 2003 (the '2003 Act'), Ofcom has a duty to regulate certain television services. This includes digital television additional services.
- 2.2 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.
- 2.3 The definition of a DTAS is set out in [section 24 of the Broadcasting Act 1996 \(the '1996 Act'\)](#). 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 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?

- 2.4 Ofcom issues DTAS licences to text or data services that are broadcast, such as the software in the example given above.
- 2.5 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.
- 2.6 Television services delivered over the internet will hold a TLCS licence if the service can be accessed by means of a UK Regulated EPG.

Licence conditions

- 2.7 Under section 4(1)(a) of 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 2003 Act.
- 2.8 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.

Our consultation

- 2.9 We explained in our consultation that 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.
- 2.10 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. Our consultation gave licensees the opportunity to do so.
- 2.11 We received two responses to our consultation, from Everyone TV Ltd and an individual respondent. We have published the responses on our [website](#).
- 2.12 In the following section we set out our consultation proposals, the responses received and our final decisions.

3. Our decisions

When a warning needs to be shown

- 3.1 We have seen 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.
- 3.2 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’. This licence condition is one of the ways in which Ofcom protects audiences from content that may potentially be harmful.
- 3.3 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.
- 3.4 The UK is no longer an EEA Member State and so, as we explained in our consultation, 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.
- 3.5 Given that we are now seeing internet delivered television services appearing on regulated EPGs and holding TLCS licences, we proposed 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 the proposed change would be fewer occasions on which a warning needs to be displayed.

Stakeholder responses

- 3.6 Everyone TV Ltd agreed with our proposal, stating “As the operator of three of the television platforms where affected channels appear (Freeview, Freeview Play and Freely), we believe that Ofcom’s proposals will help viewers to make an informed choice in their consumption of content, and reduce confusion.”¹
- 3.7 The individual respondent considered that this step would not resolve the confusion caused by what they considered to be inconsistent regulation of internet delivered services: “...Very few people watching services across mobile and TVs understand that some IP services might be regulated, and some are not, let alone why, and this isn’t even up to speed with current

¹ Ofcom currently regulates Freeview and Freeview Play. The Government has recently consulted on [proposals to regulate additional electronic programme guides \(EPGs\)](#).

technology being deployed let alone where we need to be for the next generation...". The respondent went on to state that "...where 'content services' can appear in a TV or [...] device, they should all be either regulated or not..."

What we decided

- 3.8 While Everyone TV Ltd agreed that the step would help to reduce confusion for viewers, the individual respondent considered that it would be insufficient.
- 3.9 We recognise that there have been changes in technology and delivery methods in the TV market since the existing statutory framework was introduced. However, in proposing these changes, Ofcom is bound by the existing statutory framework and changes to the statutory framework are a matter for Government.
- 3.10 Separately, the Government is consulting on whether to use its existing powers to make regulations determining that additional EPGs are Regulated EPGs,² which would result in TV services on them having to have an Ofcom licence.³ One of the proposals in the Government's consultation is to designate the 'portal' services described in paragraph 2.3 as Regulated EPGs which would result in all the TV channels accessible via those 'portal' services requiring a broadcast licence.
- 3.11 We consider that 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.
- 3.12 We have therefore decided to vary the 'third party content services' licence condition as proposed in our consultation.
- 3.13 The full licence condition is set out in Annex 1, with the text we are removing ~~struck through~~ and adding **in bold**.

Consistency across conditions in all licences

- 3.14 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 Under section 211A of the 2003 Act.

³ Services regulated by a country which is party to the European Convention on Transfrontier Television do not require an Ofcom licence to broadcast on a UK Regulated EPG.

- 3.15 To ensure a consistent approach for DTAS licensees, and for administrative reasons, we proposed adding licence conditions 22A and 22B to all DTAS licences so that, as far as possible, all DTAS licensees 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.
- 3.16 These conditions would 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.

Stakeholder responses

- 3.17 Only one of the two respondents commented on this proposal. Everyone TV Ltd agreed with the proposal, saying “We believe that a consistent approach for DTAS licensees will help to protect viewers from harmful content.”

What we decided

- 3.18 We did not receive any objection to this proposal and we will add conditions 22A and 22B to all DTAS licences for the reasons set out in paragraphs 3.8-3.13 above.

Force majeure

- 3.19 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 proposed to update it to “*the King’s enemies*”.
- 3.20 We will make this update to all DTAS licences.

Next steps

- 3.21 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 have decided upon.
- 3.22 We will also update the DTAS licence template on [the DTAS licensing webpage](#) with the changes. Any new DTAS licences we grant will be issued using the new licence template.

A1 Licence condition changes

A1.1 We have decided to include conditions 22A and 22B in the form set out below in all DTAS licences. We are also making some changes to the wording of condition 22A and condition 23. The changes are set out below, with the text we are removing ~~struck through~~ and adding **in bold**.

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~~ **another** a 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~~ **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.
- (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.
- (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.