

Radio Licensable Content Service Licences

Notes of Guidance for Applicants

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Section 1

Radio Licensable Content Services

1. The meaning of radio licensable content service is set out in sections 245 to 248 of the Communications Act 2003. Radio licensable content service (“RLCS”) licences replace the separate categories of satellite service licences and licensable sound programme service licences (i.e. cable) which were established under the Broadcasting Act 1990.
2. A radio licensable content service is a service provided in digital or analogue form broadcast from a satellite or distributed using an electronic communications network that is to be made available for reception by members of the public and consists of sound programmes.
3. In broad terms, radio licensable content services do not include internet services or two-way services. Further, they do not include a service which is distributed by means of an electronic communications network only to persons who are within a single set of premises, and not connected to an electronic communications network any part of which is outside those premises. Neither do they include services which are provided only for persons who have a business interest in the programmes included in the service or persons who are all on the business premises of the person receiving the service.
4. Ofcom’s statutory function with regard to radio licensable content service licensing is laid out in section 245 of the Communications Act 2003. To fall within the scope of this section, an RLCS would have to be either:
 - (a) provided from a place within the UK; or
 - (b) provided by a person whose principal place of business is in the UK; or
 - (c) uplinked in the UK and not licensed under the laws of another EEA state.
5. For Radio Licensable Content Service Licences, one licence is necessary per service rather than per company or individual. There is no restriction on the number of licences which can be held by an individual or company.

General Matters

6. A service will be licensable if it falls within one of the statutory licence definitions in the Communications Act 2003 (see above). Applicants are responsible for assessing whether a service requires a licence. They may wish to take their own professional advice in order to comply with this obligation
7. These notes are for the general guidance of applicants and do not purport to explain all the relevant provisions of the legislation, or give an exhaustive account of the licensing requirements and can not be taken as modifying the effect of the statutes.
8. The appropriate licensee will be the “provider” of the service. The provider is the person who is in a position to determine what is to be included in the service or in the words of the Communications Act 2003 the person “with general control

over which programmes and other services and facilities are comprised in the service (whether or not he has control of the content of individual programmes or of the broadcasting or distribution of the service)".

9. The licence does not grant any 'right' to broadcast. All commercial negotiations and arrangements are the sole responsibility of the licensee.

Data Protection

10. We require the information requested in this 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

Criteria and timetable for Licensing

11. Licence applications are considered as and when they are received. To be able fully to consider an application, Ofcom may need to request further information or clarification from the applicant. Should Ofcom request such further information or clarification from an applicant and no response is received by Ofcom within one month of such request then an application will be deemed to have lapsed.

As a guideline, our aim is to issue a licence within 4 weeks of receipt of the application. This assumes that full and accurate information has been provided by an applicant in the application form and accompanying documentation. Applicants are nevertheless advised to ensure that they have obtained their licences well in advance of their intended launch date. Applicants with religious objectives are advised to allow approximately 8 weeks for their application to be considered by Ofcom in the light of the religious ownership guidelines which can be found in Annex A.

12. Applicants should be aware that Ofcom is under a duty to ensure that it does not license bodies with objects which are of a wholly or mainly political nature, and will consider applications carefully in the light of its duties. Applications where questions arise in relation to this issue may take longer than the usual four weeks.

The Application Process

13. Ofcom will need to be satisfied that an applicant complies with the statutory provisions on ownership as laid out in Schedule 2 of the Broadcasting Act 1990 (as amended by the Broadcasting Act 1996) and the Communications Act 2003.

Briefly stated, these are:

14. Disqualified Persons:
 - i) Local authorities may not hold licences except in circumstances defined in part 2 'of' schedule 2 to the Broadcasting Act 1990 (see

also section 349 of the Communications Act 2003), and are limited to a 5% participation in any company which does.

- ii) Political bodies, their associates and officers may not hold licences and are limited to a 5% participation in any company which does.
 - iii) Publicly-funded bodies may not hold licences and are limited to a 5% participation in any company which does.
 - iv) The BBC and the Welsh Authority are disqualified from holding Ofcom licences. However, companies which the BBC controls are not disqualified.
 - v) Advertising agencies and their associates (including directors) may not hold licences and are limited to a 5% participation in any company which does.
 - vi) Anyone who has been convicted of any offence under the Wireless Telegraphy Act 1949 or Marine & c., Broadcasting (Offences) Act 1967, or of an offence under section 97 of the Broadcasting Act 1990 or section 145 of the Broadcasting Act 1996 is disqualified from holding an Ofcom licence.
 - vii) Religious bodies, their associates and officers may only hold licences if they have prior approval from Ofcom, for guidance please refer to Annex A.
15. In addition to the categories of disqualified persons listed above, Ofcom will not grant a licence unless it is satisfied that the applicant is “fit and proper” to hold it.
16. A licensee may be disqualified if, in the opinion of Ofcom, a local authority or political body is exercising undue influence over the licensee.
17. Failure by a licensee to comply with statutory ownership provisions will constitute a breach of the licence and, if not rectified, may result in revocation in accordance with accordance with the terms of the licence.
18. Full details of the ownership of any applicant company are requested on the application form. A declaration confirming that the applicant does not fall into any of the above disqualified categories must be signed and dated.

Licence Obligations

19. The radio licensable content service licence will require that the sound service it covers complies with the Ofcom broadcasting Code <http://www.ofcom.org.uk/tv/ifi/codes/bcode> which represents Ofcom’s current policy.
20. Potential applicants should be aware that in order to assist Ofcom in its functions, licensees are required to retain recordings of all programmes and ancillary material for a period of 42 days and produce them to Ofcom on request.

21. Sanctions may be imposed if licence conditions (including Code rules) are breached. These include a warning, a requirement to broadcast a statement of findings, a financial penalty, or the suspension or revocation of a licence.

Variation of Licences

22. Ofcom has the power to vary licences, but only after the licensee has been given a reasonable opportunity to make representations about any proposed variation.

Additional Requirements

23. Details of the programme service to be provided by the Radio Licensable Content Service Licensee will be set out in the Annex to the licence. If there is any change to the service provided under the terms of the licence, Ofcom will require notification.
24. Applications must be accompanied by a letter of corroboration from the satellite/cable operator. The letter must evidence that an agreement is in place (subject to contract / licence being granted etc) to carry the service for which the RLCS application is being made. The RLCS application will not be processed until this letter is received.
25. It is the responsibility of a radio licensable content service licensee to enter into agreements with the appropriate copyright licensing bodies before commencing broadcasting.

Duration

26. Radio Licensable Content Service Licences are for an indefinite period as long as the annual fees are paid, but may be surrendered by the licensee.

Fees

27. For Radio Licensable Content Service Licences the application must be accompanied by a non-refundable application fee of £250. There is an annual licence fee of £575

Annual licence fees are payable in advance and the first payment must accompany the application document.

Guidance on the Involvement of Religious Bodies

Guidance for religious bodies making applications for a broadcasting licence under paragraph 2 of Part II of Schedule 2 to the Broadcasting Act 1990

1. This guidance applies to any applicant for a broadcasting licence:
 - a) whose objects are wholly or mainly of a religious nature;
 - b) that is controlled by a body or bodies whose objects are wholly or mainly of a religious nature;
 - c) that controls a body whose objects are wholly or mainly of a religious nature;
 - d) that is an associate of a body corporate whose objects are wholly or mainly of a religious nature;
 - e) that is a body corporate in which a body falling within paragraph 1(a) to (d) holds more than a 5 per cent interest;
 - f) who an individual who is an officer of a body falling with paragraph 1(a); or
 - g) that is a body which is controlled by one or more individuals falling within paragraph 1(f).
2. Ofcom will consider applications from bodies described in paragraph 1 for the following broadcasting licences in accordance with the guidance set out in this note:
 - a) a restricted (television) service licence within the meaning of Part 1 of the Broadcasting Act 1990;
 - b) a digital (television) programme licence within the meaning of section 18 of the Broadcasting Act 1996 for the purposes of Part 1 of that Act;
 - c) a digital (television) additional services licence within the meaning of section 25 of the Broadcasting Act 1996 for the purposes of Part 1 of that Act;
 - d) a television licensable content services licence within the meaning of Part 3 of the Communications Act 2003;
 - e) a local analogue sound programme service within the meaning of section 245 of the Communications Act 2003 (including community radio service licences, as defined in the Community Radio Order 2004);

- f) a restricted (radio)service licence within the meaning of section 245 of the Communications Act 2003;
 - g) a radio licensable content service within the meaning of section 247 of the Communications Act 2003;
 - h) a local or national digital sound programme service licence within the meaning of section 60 of the Broadcasting Act 1996 for the purposes of Part 2 of that Act; and
 - i) a digital additional sound services licence within the meaning of section 64 of the Broadcasting Act 1996 for the purposes of Part 2 of that Act.
3. Pursuant to paragraph 2A of Part II of Schedule 2 to the Broadcasting Act 1990 and paragraphs 9 and 10 of Schedule 1 of the Human Rights Act 1998, Ofcom will consider the appropriateness of religious bodies to hold BA licences provided they do not:
- a) practice or advocate illegal behaviour;
 - b) practice or advocate behaviour which is injurious to the health or morals of participants or others;
 - c) practice or advocate behaviour which infringes the rights and freedoms of participants or others;
 - d) pose a threat to public safety;
 - e) pose a threat to national security or territorial integrity; or
 - f) threaten the authority and impartiality of the judiciary.
4. Ofcom will also require to be satisfied that the applicant meets the requirements placed upon all prospective licensees, including the requirements:
- a) to be a fit and proper person (section 3(3) of the Broadcasting Act 1990). This requirement will also apply to the directors and chief officers of any corporate body intended to hold the licence, and of any person or associated corporate body of that the applicant deemed to have control of the applicant for the purposes of section 357 of the Communications Act 2003;
 - b) the ability and the intention to comply with other licence conditions placed upon broadcasters, including compliance with:
 - i) Ofcom 's standards objectives (section 319 of the Communications Act 2003);
 - ii) fairness and privacy requirements (section 107 of the Broadcasting Act 1996);
 - iii) complaints handling procedures (section 328 of the Communications Act 2003);

- iv) obligations to retain and produce recordings (section 334 of the Communications Act 2003);
 - v) relevant international obligations (section 335 of the Communications Act 2003);
 - vi) equal opportunities and training requirements (section 337 of the Communications Act 2003); and
 - c) to comply with the media ownership rules applying from time to time in accordance with Schedule 14 of the Communications Act 2003.
5. Ofcom may seek evidence from the applicant and advice from other parties on the matters referred to in paragraphs 2 and 3 above before making a determination.
6. If, having made a determination under paragraph 2A of Part II of Schedule 2 of the Broadcasting Act 1990 that a body defined in paragraph 1 may hold one or more of the licences described in paragraph 2, Ofcom are satisfied that a licensee:
- a) is in breach of the restrictions set out in paragraph 2;
 - b) is no longer a fit and proper person;
 - c) is in breach of the media ownership rules referred to in paragraph 3(c);
 - d) has committed a breach of its licence conditions that is serious enough to warrant licence revocation, it may revoke that determination. In that event, the Licensee shall cease to be eligible to hold the licence and its licence will be revoked.