

**EXPLANATORY MEMORANDUM TO
THE COMMUNICATIONS (TELEVISION LICENSING)(AMENDMENT)
REGULATIONS 2007**

2007 No. 718

1. Preliminary

- 1.1 This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Description

- 2.1 These Regulations amend the Communications (Television Licensing) Regulations 2004 (S.I. 2004/692) (“the 2004 Regulations”).

Licence fee increases

- 2.2 Regulations 8(a) and (b), 9, 10, 11(1) and 12(b) and (c) provide for increases in the sums provided to be paid for different categories of licences set out in the 2004 Regulations, and in the sums payable by way of instalments under instalment schemes set out in those Regulations.

In summary-

(a) the fee for a basic black and white only TV licence is increased from £44.00 to £45.50, and that for a basic colour TV licence from £131.50 to £135.50;

(b) the issue fee and subsequent instalments for the premium instalment licence (not available in the Channel Islands) are raised to £35.14 and £35.12 respectively, the total payable rising from £136.50 to £140.50;

(c) amendments are made in relation to the instalments payable for the budget instalment licence and easy entrance licence (which is not available in the Channel Islands or Isle of Man) so that in every case the total amount payable is raised from £131.50 to 5.50;

(d) the provisions relating to the interim TV licence (which is not available in the Channel Islands except in the Bailiwick of Guernsey, excluding Sark) are amended to raise the fee payable in respect of each month, or part of a month, from £3.666 to £3.791 in the case of a black and white only TV licence and from £10.958 to £11.291 in the case of a colour TV licence;

(e) the fees in respect of residential care accommodation set out in paragraph 2 of Schedule 4 to the 2004 Regulations are increased from £5.00 to £7.50; and

(f) the provisions relating to TV licence fees for hotels, hospitality areas and mobile units are amended to reflect the rise in the fees payable for basic black and white only and colour TV licences to £45.50 and £135.50 respectively.

Other amendments

(i) Description of black and white licences

- 2.3 Regulation 3 adds a new definition of “digital set top box” which will apply in Parts 2 and 3 of the 2004 Regulations (see also regulation 6). A digital set top box is defined as a television receiver whose function is to receive television programmes in digital form, and which cannot itself display, or record or otherwise store such programmes.
- 2.4 Regulation 4 adds an interpretation provision that will apply to the description of black and white television licences in Schedule 1 to the 2004 Regulations. The purpose of the change is to ensure that a digital set top box does not require a colour television licence where it is installed and used so that it can only cause television programmes to be displayed on a television set or monitor that is only able to display them in black and white. This is to be the case regardless of the fact that the set top box may intrinsically be capable of causing programmes to be displayed in colour if used in association with some other device, such as a colour television or monitor. By virtue of the definition of “digital set top box”, the new provision will not apply to television receivers (such as VCRs) that are able to record television programmes. Hence, as was the case before the commencement of these Regulations, a television receiver that is capable of recording programmes in colour will require a colour licence, even if no facility for the display of programmes in colour is available.

(ii) Blind concession

- 2.5 Regulation 5 amends regulation 5(2)(a) and (3) of the 2004 Regulations to ensure that-
- (a) a person may establish his entitlement to the blind concession for a television licence by administrative means irrespective of the particular manner in which the authorities concerned choose to administer their registration schemes for blind people. The new wording is intended to be more flexible to allow for varieties of administrative practice in this area (for example, outsourcing);
 - (b) a certificate or other document issued by or on behalf of a Health and Social Services Trust in Northern Ireland will suffice to show that a person is registered as blind for the purposes of the concession; and
 - (c) if the BBC are satisfied that the evidence previously provided by a person is sufficient to establish his entitlement to the concession, there is no need for the person to provide further evidence, even if the previous evidence was provided more than five years before the licence is issued.

(iii) Definition of “television receiver”

- 2.6 Regulation 7 modifies the definition of “television receiver” for the purposes of Part 4 of the Communications Act 2003 (c. 21). The purpose of the change is to ensure that a digital set top box does not constitute a “television receiver” for the purposes of that Part, provided it is installed in such a way that it can only be used to cause the production of sound through a device whose functions are limited to the production of sound. This is to ensure that a digital set top box used solely as a means of generating sound without pictures does not fall within the television licensing regime.

(iv) Licence descriptions: business premises

- 2.7 Regulation 8(c) and (d) amend the descriptions of each category of television licence in the table in Schedule 1 to the 2004 Regulations. For General Form licences (regulation 8(c)) the new wording will mean that if the place specified in the licence is a business premises, these licences will authorise the installation and use of black and white or colour television receivers (as the case may be) in any vehicle, vessel or

caravan being used or occupied for the purposes of the business by a person who normally works at those premises. The existing proviso that a receiver may not be used in a caravan other than a touring caravan at the same time as a receiver is being used at the premises specified in the licence will not apply. For Multiple Form licences (regulation 8(d)), the position will be similar: where one or more of the specified locations is a business premises, the licences will authorise the installation and use of black and white or colour television receivers (as the case may be) in any vehicle, vessel or caravan being used or occupied for the purposes of the business by a person who normally works at one of those premises. Again, the existing proviso in respect of caravans will not apply.

(v) Easy entry television licences (including colour)

- 2.8 Regulation 9(8) amends paragraph 8(2) to Schedule 2 to the 2004 Regulations to omit the requirement that an Easy entry television licence (not black and white only) must be issued to a person who is in receipt of income-tested state benefits. In future such licences may be issued to any person who satisfies the other requirements of Part 3 of Schedule 2 to the 2004 Regulations.

(vi) Accommodation for residential care licences

- 2.9 Regulation 11(2) omits the word “ordinarily” from the definition of “resident” in paragraph 3(1)(a) of Schedule 4 to the 2004 Regulations (accommodation for residential care licences). The purpose of the change is to ensure that accommodation for a disabled or retired person does not cease to qualify for the residential care concession set out in that Schedule only because the residential care accommodation in question is not the person’s ‘ordinary’ residence. Residential care accommodation will still qualify for the concession even if the occupant is only resident for a limited period, during which their ‘ordinary’ residence may be elsewhere (for example, their own or a family home).

(vii) Hotels, hospitality areas and mobile units

- 2.10 Regulation 12(a) substitutes a new definition of “hotel” and inserts a new definition of “unit of overnight accommodation” in paragraph 1 of Schedule 5 to the 2004 Regulations. The purpose of the former change is to ensure that inns, guest-houses, holiday camps, caravan sites and camp sites are subject to the same requirements as other premises in order to qualify for the concession set out in the Schedule. That is, for such establishments to qualify as “hotels” they must offer accommodation consisting wholly or mainly of units of accommodation for guests for no more than 28 days’ consecutive residence. The latter change is intended to ensure that a unit of accommodation for the purposes of the concession does not include land (whether or not provided with services) on which guests are permitted to place their own structures (such as tents or caravans), as opposed to such structures offered to them by the hotel.

Saving and transitional provision

- 2.11 Regulation 13 provides that in relation to TV licences issued before 1st April 2007, Schedules 1 to 3 and 5 to the 2004 Regulations continue to apply without the amendments made by these Regulations. However, the amendments made by regulations 3, 4, 6, 7, 8(c) and (d) and 11(2) apply in relation to a TV licences issued before 1st April 2007.

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Legislative Background

4.1 This Order is made in exercise of the Secretary of State's powers under sections 365(1) and (4), 368 and 402(3) of the Communications Act 2003.

5. Extent and application

5.1 The 2004 Regulations, which these Regulations amend, extend to the whole of the United Kingdom and, by virtue of the Orders cited in the preamble to the Regulations, to the Channel Islands and the Isle of Man.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 These regulations will give effect to the first year's television licence fee increases under the new BBC funding settlement for the years 2007-08 to 2012-13, announced by the Secretary of State for Culture, Media and Sport on 18 January this year. In addition, the amendments set out in sections 2.3 to 2.10 above are designed to address a number of anomalies (explained further below) in the existing television licence fee regulations that have been drawn to the Government's attention by Members of Parliament, by members of the public and by the BBC as television licensing authority.

7.2 A digital set top box, in the view of the BBC and the Government, falls within the definition of a television receiver in the current regulations and therefore requires a TV licence if it is installed or used to receive television programmes. Since it receives and processes colour signals, it requires a colour licence, even if used in conjunction with a black and white television set or a radio. The Government believes that the black and white licence fee represents a useful concession which should remain available through digital switchover and beyond; and that a television licence should not be required to use a set top box with sound-only equipment. The new regulations will ensure this.

7.3 Registered blind people are entitled to a 50 per cent reduction in the television licence fee. The current regulations require proof of entitlement by means of a certificate or other document issued by a local authority or a certificate signed by an ophthalmologist. However, registers of blind people in Northern Ireland are maintained by Health and Social Services trusts rather than local authorities, so the first method of proof of entitlement is not available there. The new regulations will therefore add, as a recognised proof of entitlement, a certificate or document issued by or on behalf of a Health and Social Services trust in Northern Ireland. They will also introduce a degree of flexibility of proof of entitlement across the United Kingdom, the Channel Islands and the Isle of Man to allow for differences in the ways that registration schemes may be administered locally. In addition, the regulations will remove the current requirement for beneficiaries to produce proof of entitlement every five years, provided the BBC is satisfied that the proof previously provided is sufficient to establish continued entitlement.

- 7.4 A TV licence covers the use of television not only at the place specified in the licence but also in a vehicle, vessel or caravan, subject to certain conditions. The descriptions of various different TV licences in Schedule 1 to the current regulations are designed with domestic premises in mind and restrict the use of television in a vehicle, vessel or caravan to the licensee and any person normally living with the licensee at the specified location. However, many television licences are now issued for business premises. The new regulations will therefore extend the description of a licence, so that if the specified location is a business premises, the licence will also cover the installation and use of television, by a person who normally works at that location, in any vehicle, vessel or caravan that is being used or occupied for the purposes of the business.
- 7.5 The cash easy entry television licence, under which the licence fee can be paid by cash instalments, is currently available only to people in receipt of one or more income-related state benefit. The BBC has indicated, and the Government agrees, that this restriction is no longer required and the regulations will therefore remove it.
- 7.6 In relation to nursing and residential homes, the regulations governing the Accommodation for Residential Care concession currently require accommodation to be occupied by a person who is both (a) retired and aged 60 or over, or disabled, and (b) ‘ordinarily’ resident in the home. The latter requirement excludes elderly and disabled people on short term, respite care visits. The Government believes that such individuals should be able to benefit from the concession. The new regulations will therefore remove the requirement that they be ‘ordinarily’ resident in the home. The requirement that they be resident in the home will continue to apply.
- 7.7 The fee for the ARC concession has remained unchanged, at £5 per unit of qualifying accommodation, since 1988. The BBC has recently indicated that the cost of administering the concession is now £7.50 for each beneficiary. The Government believes it is reasonable for the fee to be raised to that level so that the costs of administering the scheme are covered.
- 7.8 Finally, under the special hotel licence, a single licence fee is payable for the first fifteen letting units with television and a further fee for each additional five units with television. The hotel licence is also available to inns, guest-houses, holiday camps, caravan sites and camp sites. Queries raised recently about the application of the qualifying criteria to caravan sites have identified possible ambiguities in the existing criteria. The new regulations will therefore put beyond doubt (a) that the requirement for establishments to consist wholly or mainly of units offered for accommodation by guests staying for no longer than 28 consecutive nights applies to all the above establishments and (b) that vacant plots of land offered to guests to park a caravan or pitch a tent do not count as units of accommodation for the purposes of determining whether an establishment meets the 28 night rule. These clarifications will be giving a statutory footing to interpretations that the BBC have been applying in practice to the relevant provisions. The Government believes that for the future it is appropriate to put these matters beyond any possible doubt.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies other than to clarify, and give additional flexibility to, TV licence conditions and concessions.

9. Contact

9.1 Robert Wallich at the Department for Culture, Media and Sport Tel: 0207 211 6449 or e-mail: robert.wallich@culture.gsi.gov.uk can answer any queries regarding the instrument.