

EXPLANATORY MEMORANDUM TO
THE COMMUNICATIONS (TELEVISION LICENSING) (AMENDMENT)
REGULATIONS 2016

2016 No. 704

1. Introduction

- 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. Purpose of the instrument

- 2.1 These Regulations amend the Communications Act 2003 (“the Act”) and the Communications (Television Licensing) Regulations 2004 (“the 2004 Regulations”) (S.I. 2004/692).
- 2.2 These Regulations amend existing legislation so that, as well as for receiving live programmes, a TV licence is required to stream or download any programmes in an on-demand programme service provided by the BBC (such as the iPlayer).
- 2.3 These Regulations also contain amendments requested by the Government of the Isle of Man and the States of Guernsey which concern how the TV licence fee concessions set out in the 2004 Regulations apply in the Isle of Man and to the Bailiwick of Guernsey.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The statutory framework for TV licensing is set out in Part 4 of the Act and in the 2004 Regulations. The statutory framework for the regulation of on-demand programme services is set out in Part 4A of the Act.
- 4.2 The Isle of Man, the Bailiwick of Jersey and the Bailiwick of Guernsey are Crown Dependencies. This means that they are not part of the United Kingdom but are self-governing dependencies of the Crown, with their own directly elected legislative assemblies, administrative, fiscal and legal systems and their own courts of law.
- 4.3 The majority of legislation in the Crown Dependencies is enacted at domestic level. In some cases, however, with the prior agreement of the Crown Dependencies, Acts of Parliament include what is known as a “permissive extent provision” which allows an Act to be extended to the Crown Dependencies, in whole or part, with any necessary modifications, by Order in Council. Such extension also only occurs with the prior

approval of the Crown Dependencies. When sections of an Act of Parliament that provide for the making of subordinate legislation have been extended to the Crown Dependencies, legislation made under those provisions may also extend to the Crown Dependencies.

- 4.4 The Act has, in part, been extended to the Crown Dependencies by the Orders cited in the preamble to these Regulations. Certain legislation made under the Act also extends to the Crown Dependencies. In particular, Part 4 of the Act has been extended in this way and the 2004 Regulations, made under this Part, also therefore extend to the Crown Dependencies.

BBC On-Demand Programme Services

- 4.5 Section 363 of the Act states that it is an offence to install or use a TV receiver if this has not been authorised by a TV licence. Section 368 of the Act defines a TV receiver as apparatus of a description specified in regulations by the Secretary of State. The 2004 Regulations define a TV receiver as apparatus installed or used to receive any television programme service (referred to as linear TV).

- 4.6 These Regulations are made in exercise of the Secretary of State's powers under section 368 of the Act:

- (i) to amend the definition of a television receiver in regulation 9 of the 2004 Regulations to include any apparatus used or installed to receive an on-demand programme service which is provided by the BBC e.g. iPlayer; and
- (ii) to amend the definition of the use of a television receiver in section 368 of the Act to include using a television receiver to receive all or any part of a programme included in an on-demand programme service which is provided by the BBC.

TV licence fee concessions

- 4.7 The television licensing framework set out in the Act requires persons in possession of a television receiver to pay a fee and obtain a television licence in order to use the television receiver. The legislation also provides for a number of concessions in respect of the fees payable. The residents of the Isle of Man and the States of Guernsey (excluding Sark) are required to pay the television licence fee in the same way as residents of the United Kingdom.
- 4.8 The amendments included in these Regulations concern how the TV licensing concessions apply in the Isle of Man and to the Bailiwick of Guernsey (excluding Sark). The effect of the amendments is to limit the concessions relating to the provision of free television licences for persons over 75 years of age in the Isle of Man and in the Bailiwick of Guernsey.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the whole of the United Kingdom, the Channel Islands and the Isle of Man.
- 5.2 The territorial application of this instrument is the whole of the United Kingdom and, by virtue of the Orders cited in the preamble to the Regulations, the Channel Islands and the Isle of Man.

6. European Convention on Human Rights

- 6.1 The Secretary of State for Culture, Media and Sport, The Rt Hon John Whittingdale MP, has made the following statement regarding Human Rights:

In my view the provisions of the Communications (Television Licensing) (Amendment) Regulations 2016 are compatible with the Convention rights.

7. Policy background

What is being done and why

BBC On-Demand Programme Services

- 7.1 At present it is a requirement for a person who watches or records TV programmes as they are being shown live (or nearly-live), using any television receiving equipment, including laptops, mobile phones or tablets, to be covered by a TV licence. This includes streaming live television services online and is referred to as ‘linear’ television. However, if a person only watches ‘on-demand’ services (e.g. through the BBC iPlayer or other catch-up services) at a different time to the broadcast (or provided as online only), there is no need for a TV licence. This is referred to as non-linear television.
- 7.2 The policy principle underpinning licensing is that at present everybody in the UK who watches or records linear TV on any device should be required to have a TV licence and pay the licence fee. However, under current legislation, as viewing habits shift away from linear TV, and numerous new ways of watching television content develop, viewers subject to licensing for watching or recording TV as it is being shown will increasingly foot the bill for content that many more enjoy without any payment, by viewing it through on-demand services only. The current legislation needs updating and responses to the recent Green Paper on the future of the BBC also highlighted the need to modernise the licence fee and close the ‘iPlayer loophole’.
- 7.3 In March 2016, agreement was reached between the Secretary of State for Culture, Media and Sport and the BBC to bring forward secondary legislation to extend the current scope of the TV licence to also cover BBC on-demand services (most notably the iPlayer) but not the on-demand services provided by other public service broadcasters. However, a TV licence is not required to stream or download programmes or on-demand programme services provided by the BBC’s commercial subsidiaries such as BBC Store and BBC Worldwide. Nor is a licence required to stream or download BBC programmes on any on-demand programme service not provided by the BBC, such as Netflix or Amazon Prime Instant Video.
- 7.4 A person will now be required to be covered by a TV licence to receive (i.e. stream or download) a programme or part of a programme in any on-demand programme service which is provided by the BBC. In particular, for example, anyone who streams or downloads any part of a BBC programme from BBC iPlayer, on any device, is now required to be covered by a TV licence. This includes all the ways by which BBC iPlayer can be accessed, for example, via a web browser, via mobile or tablet app, via a connected TV or a connected set-top box (including, but not limited to, Freeview Play, Freesat, YouView, Sky and Virgin Media).

TV licence fee concessions

- 7.5 As the concessions currently available in the Isle of Man and the Bailiwick of Guernsey have their statutory basis in regulation 6 of the 2004 Regulations, the Isle of Man Government and the States of Guernsey requested an amendment to the 2004 Regulations to meet the policy objectives below. The concession for persons aged 75 or over already does not apply in the Bailiwick of Jersey or to Sark within the Bailiwick of Guernsey.
- 7.6 Issues of social policy and social benefits in the Isle of Man or in the Bailiwick of Guernsey are matters for their respective governments and the Secretary of State for Culture, Media and Sport has approved the proposed amendments. The Department has therefore progressed the amendment of the 2004 Regulations on behalf of the Isle of Man Government and the States of Guernsey as requested.
- 7.7 The 2004 Regulations have also been consequentially amended in respect of fees for interim TV licences. An interim licence is a television licence issued to a person who has attained the age of 74 years before the due date, but which expires the month before the month in which that person attains the age of 75. The opportunity has also been taken to update certain references to Isle of Man Government departments and legislation in the 2004 Regulations.

TV licence fee concessions - Isle of Man

- 7.8 In February 2015, as part of the Isle of Man Government's annual Budget presented to Tynwald for debate, Tynwald resolved that the current provision for free TV licences on a universal basis for persons aged 75 or over resident in the Isle of Man is no longer appropriate and that the concession currently provided in respect of this cohort should therefore end.
- 7.9 Pensioners in the Isle of Man who are entitled to (means-tested) income support will instead be eligible to have the cost of their TV licences refunded to them through an existing Isle of Man Government scheme.

TV licence fee concessions - the Bailiwick of Guernsey

- 7.10 In March 2015, following a review of tax and personal benefits undertaken by the Guernsey government, the States of Deliberation agreed some high level principles, including a reduction of expenditure on universal benefits. The States further agreed that the provision of free TV licences should be phased out by closing the scheme to new members in 2016 and closing the scheme to all by 2020. In October 2015, the States of Deliberation considered a report recommending the social security benefit and contribution rates for 2016 and agreed, at this stage, to close the scheme which provided free TV licences for persons aged 75 or over.
- 7.11 The Bailiwick of Guernsey (excluding Sark) will retain a scheme whereby pensioners who are claiming supplementary benefit can claim a free TV licence from the Guernsey government. In addition, those in the Bailiwick of Guernsey (excluding Sark) who are aged 75 or over prior to or on the date of these Regulations coming into force will retain the concession, provided they are claiming the concession at the time this instrument comes into force.

Consolidation

- 7.12 There are no plans for consolidation.

8. Consultation outcome

- 8.1 The Government's Green Paper on BBC Charter Review published in July 2015 asked how the licence fee could be modernised to take into account closing the 'iPlayer loophole.' The majority of respondents agreed that an update of the licence fee framework was necessary due to changes in technology and in the viewing habits of audiences. The need to close the 'iPlayer loophole' was widely recognised.
- 8.2 There has been no public consultation on the changes to TV licence fee concessions by the Government of the Isle of Man or the States of Guernsey.

9. Guidance

- 9.1 The BBC will ensure that all members of the public who may be affected by these measures are made aware and given sufficient notice of the changes to the licence fee and the circumstances under which a TV licence is required. Guidance will be issued through the TV Licensing website. All households which have previously declared that a licence is unneeded will be written to in due course.
- 9.2 The Government of the Isle of Man and the States of Guernsey will provide guidance to their respective residents.

10. Impact

- 10.1 There is limited impact on business, charities and voluntary bodies.
- 10.2 There is no impact on the public sector in the United Kingdom.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to small businesses to the extent that they may be required to be covered by a TV licence.

12. Monitoring & review

- 12.1 The Department for Culture, Media and Sport will monitor and review the effectiveness of the on-demand programme services provisions from time to time.
- 12.2 The Government of the Isle of Man and the States of Guernsey will monitor and review the effectiveness of the provisions relating to the TV licence fee concession in their respective jurisdictions from time to time, alongside any domestic provisions.

13. Contact

- 13.1 George Stanley at the Department of Culture, Media and Sport can answer any queries regarding this instrument. Telephone: 020 7211 6209 or email: george.stanley@culture.gov.uk