

# COMMUNICATIONS ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3: Television and Radio Services**

#### **Chapter 3: Regulatory Structure for Independent Radio Services**

#### **Section 245: Regulation of independent radio services**

545. This section sets out those independent radio services whose regulation is a function of OFCOM, as specified in *subsections (1) and (2)*. These are national, local or restricted sound broadcasting services (so long as not broadcast solely by satellite); radio licensable content services; additional radio services; radio multiplex services; digital sound programme services; and digital additional sound services. All of these must be broadcast from the United Kingdom and are not to be regulated under this section if they are broadcast by the BBC. OFCOM's regulatory function also extends to the types of service set out above provided from somewhere outside the United Kingdom by a person (other than the BBC) whose principal place of business is in the United Kingdom.

\*“*additional radio service*” has the meaning given to it by section 114(1) of the Broadcasting Act 1990, namely any radio service which consists in the sending of signals for transmission by wireless telegraphy using the spare capacity within signals carrying any sound broadcasting service.

\*“*digital additional sound service*” means a digital additional service as defined by section 63 of the Broadcasting Act 1996, being any service which is provided for broadcast in digital form by means of a multiplex service, for reception by members of the public, but which is not a digital sound programme service, a simulcast radio service, an ancillary service or a technical service.

\*an “*ancillary service*” refers to services that are ancillary to programmes and directly related to their contents, or which relate to the promotion or listing of such programmes. Such a service is provided by the holder of a digital sound programme licence or by an independent national (analogue radio) broadcaster.

\*a “*technical service*” is a service provided for the encryption or decryption of digital programme services or digital additional services and specified in an order made by the Secretary of State (see section 63 of the 1996 Act).

\*“*digital sound programme service*”, defined in section 40(5) of the Broadcasting Act 1996 (as amended by paragraph 101 of Schedule 15), means a service consisting in the provision of programmes consisting wholly of sound (together with any ancillary services), with a view to their being broadcast in digital form so as to be available for reception by members of the public (as defined in section 361 of this Act), but does not include a simulcast radio service or a service where the sounds are to be received through the use of coded reference to pre-defined phonetic elements of sounds.

*These notes refer to the Communications Act 2003  
(c.21) which received Royal Assent on 17 July 2003*

\*“*radio multiplex service*” is defined in section 40(1) of the Broadcasting Act 1996 (and see also section 258 of this Act, and paragraph 101(2) of Schedule 15) as a service provided by any person which consists in broadcasting, for general reception, two or more digital sound programme services, simulcast radio services or digital additional sound services, by combining the relevant information in digital form.

\*“*radio licensable content service*” has the meaning given in section 247.

\*“*simulcast radio service*” is defined in section 41(2) of the Broadcasting Act 1996 (as amended by section 256 of this Act) as a service which is provided by an independent national broadcaster for broadcasting in digital form, which corresponds to a national service provided in analogue form.

546. *Subsections (5) and (6)* specify when services will be treated as if they are provided from the United Kingdom. Satellite radio services transmitted to the satellite from the UK are to be so treated, unless they are licensed or otherwise authorised under the laws of another EEA state.

***Section 246: Abolition of function of assigning radio frequencies***

547. This section removes the Secretary of State’s power to assign frequency for the purpose of the regulation of radio services, or the provision of any radio multiplex services.

***Section 247: Meaning of “radio licensable content services”***

548. Broadly, subject to the following provisions of the Act, this term includes all sound programmes broadcast for reception by members of the public from a satellite, or through an electronic communications network, whether in analogue or digital form.

***Section 248: Services that are not radio licensable content services***

549. Services that are not radio licensable content services include services comprised in television licensable content services, sound broadcasting services of the type regulated by OFCOM pursuant to section 245(3), and services provided with a view to their being broadcast by means of radio multiplex services. Nor does a service meet the description of a radio licensable content service if it is a two-way service (as defined in *subsection (4)*); or if it forms part only of a service provided by means of an electronic communications service or is one of a number of services that may be accessed through such a service where the purpose of the service provided by these means is not wholly or mainly to make available television and/or radio programmes for reception by members of the public; or if it is received only by people who have an interest in receiving the services for use in their business or employment. Finally, a service is not a radio licensable content service where it is distributed to a single set of premises by an electronic network which is contained within the premises and is not connected to any external network. These exclusions serve similar purposes to those in section 233 (television licensable content services).

***Section 249: Modification of ss. 247 and 248***

550. The Secretary of State may modify sections 247 or 248 by order, if she considers it appropriate, taking into account the level of content protection expected by the public; technical innovation; the financial consequences of modification; and the relative ease or difficulty of setting different levels of regulation for different services. The Secretary of State may also provide that a particular service should not be treated as a radio licensable content service for such provisions of this Act as she specifies.

***Section 250: Licensing of radio licensable content services***

551. An application for this type of licence under Part 3 of the Broadcasting Act 1990 must follow a procedure to be set by OFCOM. *Subsection (3)* applies sections 109 to 111A of the Broadcasting Act 1990 (powers to require broadcast of corrections, to impose penalties or shorten licence periods and to revoke licences) for the purposes of the enforcement of radio licensable content service licences.

***Section 251: Abolition of separate licences for certain sound services***

552. This section abolishes the two forms of licence which the radio licensable content service licence replaces. It puts in place transitional provisions so that after the radio transfer date any persons holding one of the abolished licence types is to be regulated by OFCOM as if he held a radio licensable content service licence, unless the service is of a kind that falls outside the definition and so no longer requires a licence at all. To the extent that any existing licence takes effect as a licence to provide a radio licensable content service, OFCOM must use their power under section 86 of the Broadcasting Act 1990 to modify that licence if they feel that it is necessary to do so in order to comply with their duty under section 263 (see below).

***Section 252: Extension of licence periods***

553. *Subsection (1)* amends section 86 of the Broadcasting Act 1990 by stating that licences shall continue in force until the earlier of their being surrendered or revoked, or the licences coming to the end of their terms. The exception is for radio licensable content services - they shall continue in force until the relevant licences are surrendered or revoked. Any licence to provide local, national or additional services must specify a maximum licence period of twelve years (*subsection (2)*).

***Section 253: Extension and modification of existing licences***

554. Previously, a newly granted licence to provide a local, national or additional service could not continue in force for more than eight years. This has now been extended to twelve years. To ensure that holders of pre-transfer national or local licences are not disadvantaged, holders of such licences can make an application for a four-year extension to that licence, and OFCOM shall grant the extension if satisfied as to the ability of the licence holder to maintain the service and the likelihood of a contravention by that licence holder of any condition imposed as to the character of the service by virtue of section 106 of the Broadcasting Act 1990, or the making of payments to OFCOM (see *subsection (8)*). On extending the licence, OFCOM may modify the licence as they think fit, by extending the period for which the licence is to be in force and making any other modifications necessary to make the licence correspond with licences granted after the radio transfer date. In the case of national licence, OFCOM must also modify the sums to be paid to OFCOM under the licence.
555. The period within which an application may be made begins no sooner than three years before the date the licence would otherwise expire and ends three months before the day that OFCOM would need to publish a notice inviting applications if they were proposing to grant a fresh licence.

\*a “pre-transfer licence” is defined in *subsection (13)* as a licence granted under the Broadcasting Act 1990 prior to the radio transfer date that has not been modified under section 253 or renewed any time on or after that date.

***Section 254: Renewal of local licences***

556. This section amends section 104A(5) of the Broadcasting Act 1990 (conditions of renewal of local licences). When a renewal application has been made, OFCOM will be required to grant the licence provided the following criteria are met: (i) they are satisfied that the applicant would, if the licence were renewed, provide a local service

complying with any conditions imposed to secure the character of the licensed service (ii) the nominated local digital sound programme service the applicant provides is being broadcast by means of a nominated local radio multiplex services; and (iii) they are satisfied that the period and times at which the nominated local digital sound programme service will be available under the renewed licence will not be significantly different, week by week, from those for and at which the licensed local service will be broadcast. This third criterion is added by this section.

***Section 255: Extension of special application procedure for local licences***

557. This section extends to all local licences the special “fast-track” application procedure for local licences under section 104B of the Broadcasting Act 1990. This allows the expedited award of a new licence to the existing licence holder if no declarations of intent to apply for the new licence are received from a person other than the licence-holder.

***Section 256: Definition of simulcast radio services***

558. This section amends the definition of simulcast radio services found in section 41 of the Broadcasting Act 1996. Broadly, they are services provided for broadcasting in digital form and which correspond to national services, as defined by section 245(4)(a) of this Act.

***Section 257: Promotion of simulcast radio services***

559. This section amends Chapter 2 of Part 3 of the Broadcasting Act 1990 (sound broadcasting services) so that OFCOM promotes the provision of simulcast radio services. When OFCOM propose to award a national service licence, they must indicate the amount of digital capacity that national radio multiplex licensees will have available for the broadcasting of simulcast radio services.

\*A “national radio multiplex licence” has the same meaning as in Part 2 of the Broadcasting Act 1996 (digital terrestrial sound broadcasting).

560. An application for a national service licence must contain the applicant’s proposals (if any) for providing a digital simulcast of their national analogue radio services. When determining the recipient of a national service licence, OFCOM may disregard the requirement under section 100 of the Broadcasting Act 1990 to award the licence to the absolute highest bidder and award the licence instead to the highest bidder amongst those applicants who propose to provide simulcast radio services. In the event of a tie between the highest bidders, OFCOM shall also have the power to exclude applicants who do not propose to provide simulcast radio services.

561. *Subsection (6)* confers on OFCOM the duty to impose conditions in a national service licence requiring a licensee to provide simulcast radio services where his application included proposals to provide such services.

***Section 258: Radio multiplex services***

562. Where a radio multiplex service is referred to in Part 2 of the Broadcasting Act 1996, it means a service (i) which is broadcast otherwise than by satellite so as to be available to members of the public and (ii) which provides, or is capable of providing, two or more digital sound services for simultaneous broadcast on the same frequency.

563. *Subsection (3)* provides that it will not be an offence to provide a radio multiplex service that is not licensed under the Broadcasting Act 1996. Only where a wireless telegraphy licence provides that any radio multiplex service being broadcast using the station or apparatus to which that licence relates must itself be licensed, shall that radio multiplex service require a licence. This will be assumed to be the case where the multiplex service is provided under a licence under the Broadcasting Act 1996 that was in force

immediately before this section comes into force and the service is broadcast using a station or apparatus that is authorised by a wireless telegraphy licence.

***Section 259: Composition of services in radio multiplexes***

564. This section makes changes to section 54 of the 1996 Act (conditions attached to radio multiplex licences) to allow OFCOM, rather than the Secretary of State, to increase (on a licence-by-licence basis) the minimum percentage of radio multiplex capacity that must be devoted to broadcasting services.
565. The Secretary of State retains the power to vary the lowest percentage that could be specified by OFCOM in a licence (currently 80%) (see *subsections (5) and (6)*).

***Section 260: Digital sound services for inclusion in non-radio multiplexes***

566. This section amends the definition of national digital sound programme services in section 60 of the Broadcasting Act 1996. Such services may now be carried by a national radio multiplex service, a television multiplex service, or even a general multiplex service.
567. *Subsection (2)* amends the definition of digital additional sound services, in section 63 of the same Act, to encompass such services whether provided by means of a radio multiplex service or a general multiplex service.
568. *Subsection (4)* amends section 72 of that Act to define a general multiplex service by reference to Part 3 of this Act. A general multiplex service is a multiplex service that is neither a television multiplex service nor a radio multiplex service: see section 362 of this Act.

***Section 261: Renewal of radio multiplex licences***

569. This section amends section 58 of the 1996 Act. Under that section, radio multiplex licences granted within 6 years of commencement of that section may be renewed for 12 years. This section extends the period during which an extension can be made from 6 to 10 years, and reduces the length of an extension made more than 6 years after commencement from 12 to 8 years.

***Section 262: Community radio***

570. The Secretary of State may by order modify the Act and the Broadcasting Acts to make special provision for radio services broadcast mainly for the benefit of the public (or members of a particular community) rather than for commercial reasons. The services should confer significant benefits on the public for which they are provided. The order may restrict advertising and programme sponsorship in the service.