



# Communications Act 2003

## 2003 CHAPTER 21

### PART 3

#### TELEVISION AND RADIO SERVICES

### CHAPTER 4

#### REGULATORY PROVISIONS

##### *Character and coverage of radio services*

#### **312 Character and coverage of sound broadcasting services**

- (1) Section 106 of the 1990 Act (requirements as to character and coverage of local and national radio services) shall be amended as follows.
- (2) In subsection (1), the words from “except” onwards shall be omitted.
- (3) After subsection (1) (duty to ensure character preserved subject to departures that do not restrict service) there shall be inserted—

“(1A) Conditions included in a licence for the purposes of subsection (1) may provide that OFCOM may consent to a departure from the character of the licensed service if, and only if, they are satisfied—

- (a) that the departure would not substantially alter the character of the service;
- (b) that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons living in the area or locality for which the service is licensed to be provided;
- (c) that, in the case of a local licence, the departure would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; or

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- (d) that, in the case of a local licence, there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure.
- (1B) The matters to which OFCOM must have regard in determining for the purposes of this section the character of a service provided under a local licence include, in particular, the selection of spoken material and music in programmes included in the service.”
- (4) For subsection (5) (restriction on power to extend licence to new area or locality) there shall be substituted—
- “(5) OFCOM shall only exercise the power conferred on them by subsection (4) if it appears to them—
- (a) that to do so would not result in a significant increase of the area or locality for which the service in question is licensed to be provided; or
  - (b) that the increase that would result is justifiable in the exceptional circumstances of the case.”
- (5) After subsection (6) of that section there shall be inserted—
- “(7) In this section “relevant independent radio services” means the following services so far as they are services falling to be regulated under section 245 of the Communications Act 2003—
- (a) sound broadcasting services;
  - (b) radio licensable content services;
  - (c) additional services;
- but, in relation to a departure from the character of a service provided under a local licence, does not include a service that is provided otherwise than wholly or mainly for reception by persons living and working in the area or locality in question.”

### **313 Consultation about change of character of local services**

After section 106 of the 1990 Act there shall be inserted—

#### **“106ZA Consultation about change of character of local services**

- (1) Before deciding for the purposes of a condition imposed under subsection (1A) of section 106 whether to consent to a departure from the character of a service provided under a local licence on any of the grounds mentioned in paragraphs (b) to (d) of that subsection, OFCOM must publish a notice specifying—
  - (a) the proposed departure; and
  - (b) the period in which representations may be made to OFCOM about the proposal.
- (2) That period must end not less than 28 days after the date of publication of the notice.
- (3) The notice must be published in such manner as appears to OFCOM to be appropriate for bringing it to the attention of the persons who, in OFCOM’s opinion, are likely to be affected by the departure.

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- (4) OFCOM—
  - (a) are not required to publish a notice under this section, and
  - (b) may specify a period of less than 28 days in such a notice as the period for representations,if they consider that the publication of the notice, or allowing a longer period for representations, would result in a delay that would be likely prejudicially to affect the interests of the licence holder.
- (5) OFCOM are not required under this section—
  - (a) to publish any matter that is confidential in accordance with subsection (6) or (7); or
  - (b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.
- (6) A matter is confidential under this subsection if—
  - (a) it relates specifically to the affairs of a particular body; and
  - (b) its publication would or might, in OFCOM’s opinion, seriously and prejudicially affect the interests of that body.
- (7) A matter is confidential under this subsection if—
  - (a) it relates specifically to the private affairs of an individual; and
  - (b) its publication would or might, in OFCOM’s opinion, seriously and prejudicially affect the interests of that individual.”

### **314 Local content and character of local sound broadcasting services**

- (1) It shall be the duty of OFCOM to carry out their functions in relation to local sound broadcasting services in the manner that they consider is best calculated to secure—
  - (a) that programmes consisting of or including local material are included in such services but, in the case of each such service, only if and to the extent (if any) that OFCOM consider appropriate in that case; and
  - (b) that, where such programmes are included in such a service, what appears to OFCOM to be a suitable proportion of them consists of locally-made programmes.
- (2) OFCOM must—
  - (a) draw up guidance as to how they consider the requirements of subsection (1) (a) and (b) should be satisfied; and
  - (b) have regard to that guidance in carrying out their functions in relation to local sound broadcasting services.
- (3) The guidance may be different for different descriptions of services.
- (4) OFCOM may revise the guidance from time to time.
- (5) Before drawing up or revising the guidance, OFCOM must consult—
  - (a) such persons as appear to them to represent the interests of persons for whom local sound broadcasting services are or would be provided;
  - (b) persons holding licences to provide local sound broadcasting services or persons appearing to represent such persons, or both; and
  - (c) such other persons as they consider appropriate.

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- (6) OFCOM must publish the guidance and every revision of it in such manner as they consider appropriate.
- (7) In this section—
- “local material”, in relation to a local sound broadcasting service, means material which is of particular interest—
- (a) to persons living or working within the area or locality for which the service is provided;
  - (b) to persons living or working within a part of that area or locality; or
  - (c) to particular communities living or working within that area or locality or a part of it;
- “locally-made”, in relation to programmes included in a local sound broadcasting service, means made wholly or partly at premises in the area or locality for which that service is provided;
- “material” includes news, information and other spoken material and music; and
- “programme” does not include an advertisement.
- (8) References in this section to persons living or working within an area or locality include references to persons undergoing education or training in that area or locality.

### **315 Variations of radio multiplex licences affecting service characteristics**

For subsection (6) of section 54 of the 1996 Act (variations of radio multiplex licence affecting service characteristics) there shall be substituted—

- “(6) Where the licence holder applies to OFCOM for the variation of a condition which—
- (a) was imposed under subsection (1)(b), and
  - (b) relates to the characteristics of digital sound programme services to be broadcast under the licence,
- then (subject to subsections (6A) and (6B)) OFCOM must vary the condition in accordance with the application.
- (6A) OFCOM are not to vary a national radio multiplex licence in accordance with an application under subsection (6) if it appears to them that, if the application were granted, the capacity of the digital sound programme services broadcast under the licence to appeal to a variety of tastes and interests would be unacceptably diminished.
- (6B) OFCOM are to vary a local radio multiplex licence in accordance with such an application only if they are satisfied—
- (a) that the variation would not unacceptably narrow the range of programmes available by way of local digital sound programme services to persons living in the area or locality for which the licensed multiplex service is provided;
  - (b) that the variation would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; or
  - (c) that there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the variation.”