

EXPLANATORY MEMORANDUM TO
THE COMMUNITY RADIO (AMENDMENT) ORDER

2010 No. 118

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

2. Purpose of the instrument

2.1 The purpose of this draft Order is to amend aspects of the existing community radio licensing regime, as set out by the Community Radio Order 2004. The Order will, in particular:

- give OFCOM powers to grant a one-off 5 year extension to community radio licences;
- allow community radio stations to obtain more than 50% of their revenue from one source (but advertising and sponsorship restrictions will continue to apply);
- allow OFCOM to award a licence to a community radio station when it would overlap with a small commercial station with a potential audience of less than 50,000 adults¹, although community radio stations in this category will be prohibited from carrying advertising and sponsorship; and
- clarify that OFCOM are not required to conduct an economic viability assessment with regard to a community radio service when deciding whether, and on what terms, to grant a licence for another community radio service.

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

3.1 None

4. Legislative Context

4.1 A draft of this Order is laid before Parliament for approval in accordance with section 262(5) of the Communications Act 2003.

4.2 Section 262(1) of the Communications Act 2003 grants the Secretary of State a power to modify, for the purpose of community radio, provisions in Part 3 of that Act and in Part 3 of the Broadcasting Act 1990.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Siôn Simon, the Minister for Creative Industries at the Department for Culture, Media and Sport, has made the following statement regarding Human Rights:

In my view the provisions of the Community Radio (Amendment) Order 2010 are compatible with the Convention rights.

¹ The Community Radio Order 2004 refers to “persons who have attained the age of 15 years”. For simplicity, in this Explanatory Memorandum we refer to such persons as “adults”.

7. Policy background

• *What is being done and why*

7.1 The Community Radio Order 2004 sets out the legislative framework for community radio and specifies the characteristics of community radio services, namely that they are local services provided primarily-

- for the good of members of the public, or of particular communities;
- to deliver social gain rather than primarily for financial or material gain for the individuals involved in providing the service;
- to give the local community opportunities to participate in the operation and management of the service.

7.2 Community radio has now established itself in the UK. OFCOM have awarded over 200 community radio licences for a wide range of services serving the young, the old, and a range of communities.

7.3 The Government asked OFCOM to review the provisions of the Community Radio Order 2004 two years after the first licence was awarded. OFCOM's review (which took place in 2007) concluded that, whilst there was a general lack of enthusiasm for any major changes, there was a demand for minor amendments to the existing licensing regime.

7.4 Following a consultation on the recommendations put forward to the Government, and analysis of the responses, this Order makes the following alterations.

Five year extension to community radio licences

7.5 The Government recognises that in practice it takes time for community radio stations to become fully established - to engage with and build trust in the communities they serve. As a result, stations are often only beginning to realise their full potential social impact towards the end of the standard 5 year licence period. Furthermore a one-off 5 year licence makes business planning difficult, as well as limiting the potential of licence holders to attract long term capital investment.

7.6 The draft Order therefore modifies the Communications Act 2003 by giving OFCOM the power to extend community radio licences for one period of not more than five years.

7.7 When considering whether a licence should be granted an extension, OFCOM shall consider:-

- the licence holder's ability to maintain the service for the period of the extension; and
- the likelihood of breach of a licence condition included by virtue of section 106 of the Broadcasting Act 1990 (as modified by paragraph 6 of the Schedule to the Community Radio Order 2004).

These conditions are similar to those applied to commercial radio stations when applying for a licence extension.

Rule prohibiting more than 50% funding from one source

7.8 The rule prohibiting a community radio station from receiving more than 50% of its funding from one source is intended to ensure that a station does not become overly reliant on one source of funding and to ensure that a single majority funder could not exert editorial influence

over a station's content. However, the Government is now of the view that existing regulatory restrictions may already prevent undue editorial influence by a major funder. Also we accept that stations themselves are best placed to make decisions on the sustainability of their funding models. Therefore, the current restriction is an unnecessary regulatory burden. This Order therefore omits section 105(2) of the Broadcasting Act 1990 (previously included by virtue of paragraph 5(2) of the Schedule to the Community Radio Order 2004), thereby allowing community radio services to receive more than 50% of their funding from any one source in any one year.

7.9 The restriction prohibiting community radio stations from deriving more than 50% of their income from advertising and sponsorship remains in force.

Rule prohibiting a community radio station overlapping with another local licence whose coverage area has fewer than 50,000 adults

7.10 The rule, prohibiting a community radio station being licensed if it were to overlap with a commercial radio station which covers an area of less than 50,000 adults, was intended to protect the smallest commercial services from an additional tier of competition. After considering the responses to our consultation, we believe this restriction can be removed without causing significant damage to commercial stations. Therefore this Order omits section 105(4)(a) of the Broadcasting Act 1990 (previously included by virtue of paragraph 5 of the Schedule to the Community Radio Order 2004).

7.11 The Community Radio Order 2004 prohibits community radio stations from carrying advertising and sponsorship if they overlap with a commercial radio station whose potential audience is between 50,000 and 150,000 adults. This restriction is in place to provide a degree of protection to smaller commercial services from the effects a community radio station might have on it. As this Order allows community radio stations to be licensed if they were to overlap with the smallest commercial stations, it would be inconsistent if the restriction on advertising and sponsorship were not to apply to this situation. This Order therefore makes changes to section 105(4)(b) of the Community Radio Order 2004, thereby applying the restriction on community radio services from carrying advertising and sponsorship if they overlap with local licences whose potential audience is up to 150,000 adults.

Other modifications of legislation in relation to community radio services

7.12 The Community Radio Order 2004 modified section 106(1A) of the Broadcasting Act 1990 by, among other things, adding (in paragraphs (e) and (f)) two further grounds on which OFCOM could agree to a departure from the character of a licensed service. The draft Order adds reference to those paragraphs in section 106ZA as being grounds on which OFCOM must consult before deciding whether to agree to such a departure.

7.13 The Community Radio Order 2004 requires OFCOM to have regard to the economic viability of any other local radio service when deciding whether, and on what terms, to grant a licence for a community radio service. This requirement, together with the restriction preventing a community radio service from accepting advertising and sponsorship of its programmes if it overlaps with a local radio service whose potential audience is less than 150,000 adults, was intended to offer a degree of protection to small local radio services other than community radio services. This Order makes changes to sections 105(3) and 105(4)(b) of the 1990 Act, as applied to community radio by the Community Radio Order 2004, to provide that the references to "any other local service" and "any other local licence" do not include references to any other community radio service or licence.

- ***Consolidation***

7.13 This is a first amendment to the Community Radio Order 2004. The Department does not consider it necessary to produce a consolidated version.

8. Consultation outcome

8.1 The Department's consultation, which ran for 10 weeks, was placed on our website and notifications were sent to the main representative bodies with an interest in these issues.

8.2 The Department consulted on the key points proposed in the Order, asking three questions:

1. Do you agree with the proposed criteria for OFCOM to apply when considering a 5 year extension?
2. Do you think the 50% funding restriction from any one source should be lifted?
- 3i) Do you think that the rule prohibiting a community radio station from being licensed if it would overlap with an existing local radio service whose MCA (potential audience) is no more than 50,000 adults, should be lifted?
- 3ii) If so, should the advertising and sponsorship restriction be applied to community radio stations that overlap with local radio services of up to 150,000 adults?

8.3 There was strong agreement to our proposals in questions 1,2 and 3i), although the majority disagreed with our proposal set out in question 3ii). Responses to the consultation, alongside our response to the issues raised, can be found on the DCMS website:

http://www.culture.gov.uk/reference_library/publications/6389.aspx.

9. Guidance

9.1 The broadcast regulator OFCOM will be responsible for implementing the changes made to the community radio licensing regime by this Order.

10. Impact

10.1 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation will apply to community radio stations, which would likely be considered as small businesses.

12. Monitoring & review

12.1 The sector will be closely monitored by the Department and OFCOM.

12.2 OFCOM produce an Annual Report of the Community Radio sector.

13. Contact

John Mottram at the Department for Culture, Media and Sport, telephone 0207 211 6414 or Email john.mottram@culture.gsi.gov.uk, can answer any queries regarding the instrument.

| Community Radio | | |
|--|--|--------------------------------------|
| Department /Agency: DCMS | Title: Impact Assessment of the Community Radio (Amendment) Order 2010 | |
| | | |
| Stage: Final | Version: Final | Date: 16 th November 2009 |
| Related Publications: An Independent Review of the Rules Governing Local Content on Commercial Radio Ofcom 'Future of Radio – The Next Phase' | | |

Available to view or download at:

<http://www.culture.gov.uk>

Contact for enquiries: John Mottram

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What is the problem under consideration? Why is government intervention necessary?

Many of the key characteristics of community radio are secured through the regulatory structures put in place in the Community Radio Order 2004. We have also acknowledged that these structures would need to be regularly reviewed to understand their impact on the emerging community radio sector, and the extent to which, if any, they are a barrier to the successful operation of the sector. These structures now represent barriers to the growth and effective operation of community radio.

What are the policy objectives and the intended effects?

We intend to remove some of the existing regulatory barriers to promote the growth and more effective operation of community radio stations. In particular, we are intending to allow stations more control over the way in which they are funded, encourage more long-term funding and promote stations in small communities.

What policy options have been considered? Please justify any preferred option.

Ofcom's review of the community radio sector in 2007 as part of the "The Future of Radio" consultation considered a wide range of options across all of the current regulations placed on community radio sector. Ofcom's conclusions were published in "The Future of Radio – the next phase" (<http://www.ofcom.org.uk/consult/condocs/futureradio07/>). We addressed these conclusions in our own consultation "Amendments to the Community Radio Licensing Regime" (http://www.culture.gov.uk/reference_library/consultations/6213.aspx) in 2009, alongside discussions with key stakeholders, including Ofcom. Our response to the consultation set out our conclusions and next steps (http://www.culture.gov.uk/reference_library/publications/6389.aspx).

Our preferred option, set out below, will provide greater flexibility for stations and reduce the overall regulatory burden on the sector. In addition, it will provide greater certainty for community stations to plan for their future. However, we believe these changes will also retain a level of protection to small commercial radio stations, which are experiencing significant falls in revenue.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Ofcom will continue to monitor the health of the community radio sector, providing feedback to the Department as necessary. In addition, we will be working with the sector to consider the implementation of the recommendations in the Digital Britain White Paper, specifically the appropriate level of regulation that will be required to secure the proposed Ultra-local tier of radio.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: Siôn Simon

.....Date: 16th November 2009

Analysis & Evidence

| | |
|-----------------------|---------------------|
| Policy Option: | Description: |
|-----------------------|---------------------|

| | | | | |
|--|--|---|----------|--|
| COSTS | ANNUAL COSTS | We do not believe that these proposals will result in any direct cost to community radio stations. However, we acknowledge that some of the de-regulation might result in a cost, through a loss of revenue, to some commercial stations but there is no evidence to date which suggests that this cost will be significant, or that it can be monetised. | | |
| | One-off (Transition) Yrs | | | |
| | £ 0 | | | |
| | Average Annual Cost (excluding one-off) | | | |
| | £ Unknown | | | |
| | | Total Cost (PV) | £ | |
| Other key non-monetised costs by 'main affected groups' | | | | |

| | | | | |
|---|---|--|----------|--|
| BENEFITS | ANNUAL BENEFITS | Although Ofcom will incur negligible administrative costs to set up the new 5 year extension, this is likely to be more than offset by the savings they make in not having to re-advertise the licences. Ofcom estimate that this could be up to £3m if each of the 200 community licence holders eventually applies for an extension to their licences. | | |
| | One-off Yrs | | | |
| | £ 3 million | | | |
| | Average Annual Benefit (excluding one-off) | | | |
| | £ | | | |
| | | Total Benefit (PV) | £ | |
| Other key non-monetised benefits by 'main affected groups' | | | | |
| Community radio will be able to plan better financially with the changes made by the Order. | | | | |

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|--|---|
| Key Assumptions/Sensitivities/Risks | Annual Benefits are based on an assumption of the administrative time and cost, both by the applicant and Ofcom, of an application both for a renewal |
|--|---|

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|------------------------|--------------------------|--|--|
| Price Base Year | Time Period Years | Net Benefit Range (NPV) £ | NET BENEFIT (NPV Best estimate) £ |
|------------------------|--------------------------|--|--|

| | | | | |
|---|--|-------------|-------|--------------|
| What is the geographic coverage of the policy/option? | | UK wide | | |
| On what date will the policy be implemented? | | Spring 2010 | | |
| Which organisation(s) will enforce the policy? | | Ofcom | | |
| What is the total annual cost of enforcement for these organisations? | | £ Unknown | | |
| Does enforcement comply with Hampton principles? | | No | | |
| Will implementation go beyond minimum EU requirements? | | Yes | | |
| What is the value of the proposed offsetting measure per year? | | £ Unknown | | |
| What is the value of changes in greenhouse gas emissions? | | £ Unknown | | |
| Will the proposal have a significant impact on competition? | | No | | |
| Annual cost (£-£) per organisation (excluding one-off) | | Micro | Small | Medium Large |
| Are any of these organisations exempt? | | No | No | N/A N/A |

| | | | | |
|---|--------------|-----------------------|--------------|--------------------------------|
| Impact on Admin Burdens Baseline (2005 Prices) | | (Increase - Decrease) | | |
| Increase of | £ negligible | Decrease of | £ negligible | Net Impact £ negligible |

Key: Annual costs and benefits: Constant (Net) Present

Evidence Base (for summary sheets)

1. Background

Community radio stations, established by the Community Radio Order 2004, are defined as small-scale, not-for-profit radio stations operated to deliver social gain to communities. To date Ofcom has awarded over 200 community radio licences; each licence is awarded for around five years. The range of stations broadcasting is very broad: from those targeting ethnic communities and religious groups through to children and local communities. Social gain benefits include the encouragement and support of social inclusion, local education and lifelong learning, training and work experience, along with wider access to broadcasting opportunities for communities.

Community radio stations are subject to restrictions on the source of their funding, this is a mechanism to protect both the unique character of community stations and provide a level of protection to small commercial stations, which do not have access to public funding. These restrictions are:

- No more than 50% qualifying revenue from advertising or sponsorship; or
- No revenue from advertising or sponsorship where a community radio station overlaps with a commercial station with a coverage area of between 50,000 and 150,000 adults.

In addition, Ofcom are prohibited from licensing a community radio station in an area which would overlap with a commercial station with a coverage area of less than 50,000 adults.

To assess the impact of these restrictions the Government asked Ofcom to review the community radio sector two years after the first licence was awarded. This review, which began in April 2007, sought views, via a consultation, on a wide range of issues, including the current funding restrictions and licensing conditions.

2 Rationale for Government intervention

As community radio establishes itself across the UK, it is becoming clearer that the anticipated benefits are materialising. The vast majority of stations are meeting their key objectives, and the Government's own research² showed that stations were having a real impact on the

² 'The Community Radio Sector: Looking to the Future' – December 2006

communities they serve. For example, Ofcom's first Annual report of the sector in early 2009 noted that on average community radio stations have around 74 regular volunteers, providing around 214 volunteer hours a week.

We were clear from the outset we would keep the restrictions placed on community radio stations under review to ensure they remain appropriate. The first review, conducted by Ofcom as part of their consultation "The Future of Radio" in 2007, suggest a number of areas where de-regulation would be appropriate and help to secure the long term sustainability of the sector. More recently John Myers, in his Independent Review of the Rules Governing Local Content on Commercial Radio (http://www.culture.gov.uk/reference_library/publications/6053.aspx), identified a further area where relaxation of the rules could be made. These recommendations are set out in detail below.

The current regulations allow for community radio licences to be awarded for a five year period. We remain of the view that a five year licence period, compared to 12 years which is granted to commercial stations, is the appropriate period for community radio; particularly while available spectrum is very limited. However, we acknowledge that community radio stations are taking longer than we initially expected to establish themselves both as community resources and to build the necessary volunteer base. Therefore, there is a strong case for successful stations to be allowed to continue to build upon their successes in the communities they serve by being able to apply for a five year extension.

The Government also accepts the view that the restrictions on the percentage of revenues from a single source, which are designed to protect the editorial integrity of stations and reduce the reliance on a single funding source, can be achieved by other means. In particular we note that Ofcom already has powers to revoke a community radio licence if there is evidence that:

- the station is in breach of the special impartiality requirements set out in the Communications Act 2003;
- the station is not meeting the key characteristics of community radio as set out in the Community Radio Order 2004; or
- the station is not complying with its individual 'key commitments' which are included in licences.

We also believe that stations will operate more efficiently if they themselves can make decisions on the suitability and sustainability of their funding.

We also believe the restriction to prohibit the licensing of a community radio station if it was to overlap with another licence for a commercial station with a MCA³ of 50,000 adults or less should be lifted. This restriction was put in place because we believed that, at least in the short term, it was necessary to protect the smallest commercial radio services from an additional tier of competition. Whilst there is little evidence of the impact of community radio stations on local commercial stations, we believe that where community stations are prohibited from taking any advertising and sponsorship any impact is minimal. With this in mind we no longer believe it is appropriate to limit listeners' access to a community radio station because of their proximity to a small commercial station. This view was supported by the independent review of localness⁴, commissioned by Government as part of the Digital Britain Review, which recommended that this restriction be lifted.

3 Policy Options

Option 1 – Do Nothing

Benefits

It is our view that a 'do nothing' scenario would have very few benefits to the sector. The decision to retain the existing five-year licence period, without the right to renewal, would allow new entrants into the market, particularly where opportunities are limited because of the scarcity of spectrum. This could allow for new stations which target a different community of interest than the existing station and therefore provide a service for listeners not currently served by community radio. Although clearly any such benefit would need to be weighed against the loss of the existing service.

Maintaining the 'status quo' would also preserve the protections to small commercial stations which are operating in a market where advertising revenues are expected to fall between 10% and 20% this year. Total revenues for the commercial radio sector have been in decline since 2000, down from £750 million to £560 million in 2008.⁵ Although many community radio stations are prohibited or restricted from taking advertising, allowing for more stations to be licensed may attract listeners away from commercial stations and as a result reduce the value of the station to advertisers.

³ MCA: Measured Coverage Area means, in relation to any local service, the number of persons who have attained the age of 15, who reside within the coverage area for that particular service.

⁴ An Independent Review of the Rules Governing Local Content on Commercial Radio.
http://www.culture.gov.uk/reference_library/publications/6053.aspx

⁵ Source – An Independent Review of the Rules Governing Local Content on Commercial Radio, John Myers (2009).

Costs

Retaining the existing regulatory structures would require community stations, which only 3 or 4 years earlier had applied for a licence, to repeat the process again. A new application, rather than a renewal, has administrative costs both for the applicant and for Ofcom. Ofcom have estimated that their costs for processing applications for community radio licences are in the region of £20,000 each.

Leaving the 50% funding from one source restriction in force, would mean that there may be occasions when a community radio station may have to reject essential funding, or a portion of funding.

Option 2 – Change the existing Community Radio Framework – Preferred Option

This section considers the costs and benefits of the following changes to the existing regulatory regime:

- Allow licence holders to apply for a one-off extension of their existing licence for a period of up to 5 years;
- Lift the existing rule prohibiting more than 50% funding from one source; and
- Lift the rule prohibiting a community radio station from being licensed if it overlapped with a local commercial service whose coverage was fewer than 50,000 adults, although these stations will be prohibited from taking any advertising.

Benefits

The changes, set out above, will allow existing licence holders to build on the work and network of volunteers which they have established in the first five years of their licence. The networks are crucial to the delivery of stations' social gain objectives and have taken longer than expected to develop. With this in mind there would be little benefit to stations or listeners should these stations, which have worked hard to gain the trust of their communities, not be given the time to realise their potential. It is also our view that a longer licence period will allow stations to plan better for their future, in particular in securing funding.

Lifting the 50% funding from one source rule would allow stations to have a greater autonomy on their own funding decisions. Anecdotally we are aware that some stations have been forced to reject some or all funding, sometimes public-funding, because it would breach these rules. We do not think such instances are in the best interest of community radio stations or listeners.

The proposal to remove the rule prohibiting community stations being licensed in areas with small commercial stations will allow a greater number of listeners and communities across the UK to have access to and benefit from community radio.

Costs

The changes set out above will allow for savings to be made by both Ofcom and community radio stations. The application regime for the five year extension will be more simplistic than requiring applicants to re-apply through an open competition. Ofcom estimate their cost for processing an extension will be in the region of £5,000, therefore leading to a saving of about £15,000 for each of the 200 licences and an approximate saving of £3m to the sector as a whole.

The effect of allowing community radio stations to co-exist with the smallest commercial stations is difficult to quantify. However, it is likely that community radio stations will attract some listeners from local commercial stations. This could affect the value of an advertising slot to a local commercial station.

4 Consumer Impact

There is no obvious cost to consumers. Instead we expect consumers to benefit through their access to community radio stations which are better able to secure funding and have more certainty of their future.

To not lift the restriction prohibiting a community radio station from being licensed if it would overlap with a very small commercial service means that a number of small communities would continue without access to a community radio station.

5 Small Firms Impact Test

The change allowing community radio stations to be licensed in areas with very small commercial services would have a minimal impact on these small stations. The other proposals are unlikely to have an impact on small firms.

6 Competition

There would be no significant impact on competition, although the five year extension will mean that an aspiring community radio station in an area with spectrum scarcity may have to wait a further five years before applying for a community radio licence. However, they would be able to continue to apply for short-term licences and broadcast via the internet.

7 Equality Impact Assessment

After initial screening as to the potential impact of this policy/regulation on race, disability and gender equality it has been decided that there will not be a major impact upon minority groups in terms of numbers affected or the seriousness of the likely impact, or both.

8 Monitoring and evaluation

Ofcom and Government will monitor the impact of the proposed amendments. Specifically, Ofcom concluded in their review of community radio conducted in 2007 that they would review the “current economic impact requirements of the legislation” in late 2009.

