

Department for Culture, Media and Sport
Broadcasting Policy Division



department for
**culture, media
and sport**

Consultation on Community Audio Distribution Systems

Responses should be made by **5 December 2006**

Consultation Document

COMMUNITY AUDIO DISTRIBUTION SYSTEMS

1. Introduction

1. This consultation paper seeks views on a proposal to allow Community Audio Distribution Systems (CADS) to be exempted from the requirement to hold a broadcasting licence. This will involve an Order being put before Parliament which would exempt CADS from the offence of unlicensed broadcasting, as defined under section 126 (1) of the Broadcasting Act 1990 (BA).

Policy background

2. The use of spectrum assigned to Citizen's Band (CB) radio to transmit community events, predominantly religious services, began during the mid 1990s. However, the then regulator, the Radio Communications Agency, declared that these services were in breach of licence conditions, due to the 'one-way' nature of the service, and they were forced to stop transmitting. Ofcom, recognising the continued demand for these services, launched a trial of CADS across Northern Ireland and West Yorkshire with the aim of gauging both the demand and the extent to which CADS and CB users could co-exist on the same spectrum. For the purposes of the trial CADS operators were licensed under the Wireless Telegraphy Act 1949 (WTA).
3. In reviewing the trial Ofcom have concluded that CADs should fall under the category of a sound broadcasting service, as defined in section 126 (1) of the Broadcasting Act 1990 (as amended). This is because the services consist of a one-way, rather than conversational two-way, transmission for reception by members of the public. As such, CADS would, under the current law, be required to hold a broadcasting licence.
4. After evaluating the success of the trial Ofcom launched a consultation to consider the appropriate nature of a full time scheme for CADS. In their consultation Ofcom question the appropriateness of requiring CADS to hold a BA licence. They state that the nature of CADS, in particular the spectrum and equipment used, makes them more akin to closed user group services, which are BA licence exempt. They also note that a BA licensing regime would represent a disproportionate regulatory burden, which in some instances may result in CADS being forced to cease broadcasting. In Ofcom's consultation they sought views on the possibility of asking the DCMS to make an Order to exempt CADS from the offence of unlicensed broadcasting, in effect allowing them to broadcast without a licence.
5. Ofcom published their consultation response statement on 12 September 2006. In total, Ofcom received 37 responses of which 29 (78%) supported their proposal for a permanent scheme for CADS. When asked whether the Secretary of State for Culture, Media, and Sport should lay an Order to exempt CADS from the need to hold a BA licence, 19 respondents replied; of these 15, around 79%, agreed with the proposal. Some CB users raised concerns that CADS might occupy too much spectrum and so limit the availability for other CB users.

Legal details

6. The Broadcasting Act 1990, section 97, makes it an offence for any person to broadcast an independent radio service without a licence. However, the possibility of an exemption from this offence, for specifically defined services, was anticipated in the Broadcasting Act 1990. We propose to make an Order to define CADS as a service for which any person is exempt from the offence of broadcasting without a licence, using the powers granted to the Secretary of State under section 97 (2) of the Broadcasting Act 1990. Any exemption is subject to consultation with the relevant authority, which in this case is Ofcom.
7. The draft Order which makes this change is attached as [Appendix A](#).

Rationale for change

8. We agree that it is sensible for persons providing CADS to be exempt from the offence of providing independent radio services without a Broadcasting Act licence. CADS are run without commercial gain and in most instances by community groups or religious organisations with limited financial resources. The direct cost of the licensing, application and annual fees, as well as the related regulatory costs and resources, are beyond the means of many CADS providers. In addition, CADS services are distinct from traditional broadcasting in that they will cover only small geographic areas and will be available only to a self-selecting user group.
9. Usage of the spectrum allocated to CB radio has decreased over the last few years; there are just over 16,000¹ licensed CB users in the UK. Ofcom's trial has shown a demand for CADS services and that the needs of CADS and CB users can be met within the same spectrum. In addition, Ofcom have a general duty to ensure the optimal use of the wireless telegraphy spectrum.
10. One of the rationales for requiring services to be licensed is to ensure effective spectrum management which can protect services from interference. In the case of CADS the spectrum affords none of the security of traditional licensed broadcasting. This is because, alongside standard CB users, CADS services share the spectrum, as secondary users, with the Ministry of Defence and frequencies are used on a first come first served basis. The use of this spectrum is based on the understanding that, as secondary users, CADS should not cause interference to MoD services and that if MOD requires the use of any CB radio channel they may occupy it without prior notice.
11. Allowing CADS to broadcast in an unlicensed environment will remove Ofcom's usual powers to monitor and regulate content, powers which are derived from the licensing regime. However, Ofcom will still retain broad powers to prosecute the broadcasting, by CADS, of content of a grossly offensive, indecent, obscene or menacing character. These rules are set out in The Wireless Telegraphy (Content of Transmission) Regulations Order 1998. Breach of the rules can result in a court ordered penalty of £5,000 and/or imprisonment of up to six months.

¹ Figure correct as of March 2006.

12. Ofcom have recently consulted on the terms of the Wireless Telegraphy (Exemption) Regulations 2003. In this consultation Ofcom state that CB radio users, including CADs, 'poses a low level risk of interference to other users of the radio spectrum and would be more appropriately authorised by exemption rather than individual licences'². We believe that exempting CADs from the BA licensing regime is in keeping with Ofcom's overall strategy of de-regulating users of the CB allocated spectrum.

Definition of CADs

13. In our view the case for a BA licence exemption for CADs is owing to the special characteristics of the services. However, it is important that CADs are not a 'backdoor' route in to broadcasting. For this reason we propose to define tightly the types of services which will be included within the exemption. In the draft Order, attached as Appendix 1, Article 2 (2) sets out the characteristics a service must have in order to be considered a CADs and as a consequence of which a CADs provider would be exempted from the offence of unlicensed broadcasting. The definition includes the following:

- services may be carried only on the frequencies allocated to Citizen's Band;
- broadcasts must only be the live onward transmission of a live event, the event must be held in a publicly accessible place and not be held for the purposes of broadcasting;
- the transmitter's highest point should not exceed 10 metres, this will restrict the broadcast area;
- services should not include advertising or sponsorship; and
- services shall not be broadcast for more than four hours each, with at least a 1 hour break between each four hour period.

14. We have sought to address Ofcom's recommendations, as set out in their Community Audio Distribution Systems Consultation in April 2006. We agree that CADs should be prevented from carrying commercial messages of any kind, that services should be restricted to local geographic areas, and that daily broadcast transmission time should be limited.

15. Although we agree that CADs should be restricted to the live onward transmission of an event, we believe that it is unnecessary to impose a requirement for the event to be of a community nature. The definition of community, in this context, is too wide to be easily defined in a statutory Order. Clearly defined criteria are particularly important in this instance because providing independent radio services without a licence, where a licence is required, is a criminal offence. In addition, we believe that the other restrictions are sufficient to preserve the desired characteristics of CADs.

² Ofcom, 'Wireless Telegraphy Licence Exemption: Amending the Wireless Telegraphy (Exemptions) regulations 2003', page 9 para 3.4

Regulatory Impact Assessment

16. This is attached at Appendix B to this consultation document.

Questions

1. Do you agree that the DCMS should introduce an Order which would exempt CADS from being required to hold a Broadcasting Act licence?
2. Do you agree with the definition of CADS as set out in the draft Order at Appendix 1?

Responses should be made by **5 December 2006** either by post to:

James Venus
Broadcasting Policy Division
Department for Culture, Media and Sport
5th Floor
2-4 Cockspur Street
London SW1Y 5DH

Or by email to James.Venus@culture.gsi.gov.uk.

Please note that all information in responses, including personal information, may be subject to publication or disclosure under the Freedom of Information Act 2000. If a correspondent requests confidentiality this cannot be guaranteed, and will only be possible if considered appropriate under the legislation.

If you have any questions or complaints about the process of consultation on this paper, please contact Liz Sweet, Consultation Co-ordinator, Strategy Division, Department for Culture, Media and Sport, 2-4 Cockspur Street, London SW1Y 5DH, liz.sweet@culture.gsi.gov.uk

 STATUTORY INSTRUMENTS

2006 No.

BROADCASTING
**The Broadcasting Act 1990 (Independent Radio Services
 Exceptions) Order 2006**

Made - - - - ****

Laid before Parliament ****

Coming into force - - ****

The Secretary of State, in exercise of the powers conferred by sections 97(2) and 200 of the Broadcasting Act 1990³, makes the following Order.

In accordance with section 97(2) of that Act she has consulted OFCOM.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Broadcasting Act 1990 (Independent Radio Services Exceptions) Order 2006 and shall come into force on xxx date.

(2) In this Order—

“wireless telegraphy apparatus” has the meaning given by section 19(1) of the Wireless Telegraphy Act 1949⁴.

Excepted Radio Services

2.—(1) Section 97(1) of the Broadcasting Act 1990 does not apply to any service of the description specified in paragraph (2).

(2) The description of services referred to in paragraph (1) is any service which—

- (a) is transmitted on wireless telegraphy apparatus designed or adapted for the provision of voice radiocommunications in the frequency bands 26.97 to 27.41 MHz and 27.60 to 27.99 MHz;
- (b) consists solely of the onward transmission of a live event of a kind falling within paragraph (3) at the same time as that event takes place;
- (c) is not a transmission derived from a transmission described in paragraph (a);
- (d) is not transmitted from an antenna whose highest point exceeds a height of 10 metres above ground level;

³ 1990 c. 42; section 97 was amended by the Broadcasting Act 1996 (c.55), Schedule 10, Part 1, paragraph 7 and the Communications Act 2003 (c.21), section 360(3), Schedule 15, Part 1, paragraph 37.

⁴ 1949 c. 50.

- (e) does not include any advertisement or sponsorship for which any person has received, will receive, or is or will be entitled to receive, any payment or other financial benefit (whether direct or indirect) in consideration for so including it; and
 - (f) is transmitted for a total of not more than four hours each day and after any continuous period of transmission of four hours there is a break of at least one hour before there is any further transmission.
- (3) An event falls within this paragraph if –
- (a) it is held in a place to which the public are permitted to have access (whether on payment or otherwise); and
 - (b) it is not held wholly or mainly for the purpose of its distribution by an electronic communications network within the meaning of the Communications Act 2003⁵.

Signatory text

Address	<i>Name</i>
Date	Minister for Creative Industries and Tourism Department for Culture, Media and Sport

EXPLANATORY NOTE

(This note is not part of the Order)

Under section 97(1) of the Broadcasting Act 1990 (“the 1990 Act”), it is an offence for a person to provide any independent radio service (as defined by section 84(1) of that Act) without being authorised to do so by or under licence under Part 3 of that Act. Under section 97(2) of the 1990 Act the Secretary of State may, after consultation with OFCOM, order that section 97(1) does not apply to such services or descriptions of services as are specified.

This Order specifies a category of services to which section 97(1) does not apply. Article 2(2) specifies the characteristics of the services which are exempted by this Order whilst Article 3 imposes limitations on the type of event which may be the subject of the service.

A regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

⁵ 2003 c. 21; section 32 (1) defines the meaning of an electronic communications network.

Appendix B

PARTIAL REGULATORY IMPACT ASSESSMENT

1. Title of proposal

- 1.1 An Order which will exempt Community Audio Distribution Systems (CADS) from the offence of broadcasting without a licence.

2. Purpose and intended effect

Objective

- 2.1 To allow CADS to broadcast, using the Citizen Band's (CB) allocated spectrum, without requiring them to hold a Broadcasting Act 1990 (BA) licence.

Background

- 2.2 CADS are the means by which community events may be broadcast to the local area using CB radio. To date the demand for these services has mainly been from religious groups in Northern Ireland broadcasting services to their housebound parishioners. Ofcom launched a trial of these services, in Northern Ireland and West Yorkshire, during 2004 which is due to end in March 2007.
- 2.3 As with all CB users, for the purpose of the trial CADS operators were licensed under the Wireless Telegraphy Act 1949 (WTA). However, as the services transmit 'one-way', rather than a conversational 'two-way', Ofcom (in discussion with DCMS) concluded that, although the services are carried on the spectrum allocated to CB, it would not be appropriate for them to continue to be licensed solely under the WT Act. The 'one-way' nature of CADS defines it as a broadcast service and, as such, providers must be licensed under the Broadcasting Act 1990 as well as the Wireless Telegraphy Act 1949, unless otherwise exempted.

Rationale for Government intervention

- 2.4 Ofcom recommended, in their consultation, that it would be a disproportionate burden to require CADS to be licensed under the BA. A BA licence carries an annual fee as well as a one-off application cost. In addition, the Communications Act requires that BA licence holders record and keep copies of their output for 'a period not exceeding 42 days' in order to allow Ofcom to consider content complaints. This would require CADS to purchase recording equipment, as well as the means to administer and track content complaints.
- 2.5 The DCMS agree that requiring CADS to hold a BA licence is disproportionate to the type of service that is being broadcast. We also note that CADS will be restricted to spectrum assigned for CB Radio and therefore the chance of accessing these services unintentionally is minimal. Also, the services will be

restricted to very local areas and to those who have specifically purchased a CB receiver, so they represent little commercial value.

3. Consultation

Within Government

3.1 The DCMS have consulted with the DTI who support the proposed Order.

Public Consultation

3.2 Ofcom have consulted extensively on this subject, starting in 2004.

4. Options

4.1 For the purposes of this exercise we will consider the possibility of no change and an exemption with restrictions.

No Change

4.2 As outlined above, no change would mean that CADS would be required to hold a BA licence with all the associated costs and regulatory regime. We believe that in most instances CADS operators will not be able to afford or meet the regulatory requirements of a BA licence regime. This will result in operators being forced to cease transmission or to broadcast illegally. It is likely that such an approach would be unacceptable to CADS operators and listeners.

Exemption with restrictions

4.3 It is possible to make an Order using the powers in the Broadcasting Act 1996 which would exempt CADS users from the offence of broadcasting without a licence. We believe that using these powers in order to exempt CADS from the need to hold a BA licence represents the most suitable regulatory regime, which reflects the unique nature of CADS.

4.4 We believe it is important that CADS should have very specifically defined purposes and characteristics to ensure they do not become a 'back door' into broadcasting. It is also important that unlicensed services are not used to promote commercial activities or to carry advertising. We shall therefore specify the nature of CADS services which will benefit from the exemptions. The Order will require that CADS must broadcast only a live onward transmission of a community event. A service will fall outside the scope of the exemption if it carries advertising or sponsorship.

4.5 One of the reasons for Ofcom commissioning a trial of these services was to ascertain whether CADS and CB users could operate on the same spectrum. Although the trial showed that the two services could co-exist, we are concerned CADS might monopolise the spectrum. For this reason, in order to benefit from the exemption, CADS are prohibited from broadcasting for more

than 4 hours each day, while restrictions on transmitter height will limit their geographic coverage.

5. Costs and benefits

Sectors and groups affected

Consumers

- 5.1 Consumers will want to have access to these services in their area, although they will have to buy a CB receiver.

Radio Industry

- 5.2 CADS will operate on CB spectrum, so they will have no effect on the availability of spectrum for other radio services. In addition, the restrictions on advertising and sponsorship will ensure that the services will not affect commercial radio revenues.

CB Radio Industry

- 5.3 It is unlikely that the number of CADS operators and listeners will have a significant effect on the market. However, should CADS become more successful then it possible that increased demand may reduce transmitter and receiver costs, although these are already very low.

Benefits

- 5.4 The main benefit of this change will be to existing CADS operator and listeners, as they will be given a full time scheme. It will also enable the scheme to be extended nationally.

Costs

- 5.5 The proposals for a fulltime CADS scheme may result in more users on the CB spectrum. This may in turn result in a reduction of the amount of spectrum available, at anyone time, for CB radio users. This was considered as part of the CADS trial and Ofcom concluded that the two services could co-exist successfully. In fact, usage of CB spectrum has declined greatly over the last 10 years.

6. Small Firms Impact Test

- 6.1 The proposal has been subject to consultation by Ofcom and this proposal has not identified any specific impact on small firms.

7. Competition assessment

- 7.1 There would be no significant impact on competition, as CADS are not for profit local services. Displacement impact on other spectrum users is locally limited by restrictions on CADS broadcast periods.

8. Enforcement, sanctions, and monitoring

- 8.1 One effect of the exemption from holding a BA licence would be the removal of Ofcom's powers to monitor and regulate CADS content. However, if CADS were to broadcast offensive material they would still be subject to general criminal law and specifically to The Wireless Telegraphy (Content of Transmission) Regulations Order 1998 which makes it an offence to "send a message, communication or other matter in whatever form that is grossly offensive or of an indecent, obscene or menacing character". Breach of this Order can result in a court ordered penalty of up to £5,000 and/or imprisonment for up to six months, and the forfeit of apparatus used in committing the offence.
- 8.2 Of course any service that did not remain within the definition of CADS would no longer be exempted from the requirement to hold a BA licence. Any person providing the service would be committing a criminal offence if he continued to provide that service without applying for a BA licence.