



department for
**culture, media
and sport**

Consultation on Amendments to the Community Radio Licensing Regime

16 June 2009

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

Introduction

1. The Digital Britain Final Report (DBR) sets out the Government's commitment to consult on proposals:
 - for a one-off five-year extension of community radio licences;
 - to re-visit the rationale for the current restriction of 50% funding from any one source; and
 - removing the rule which prohibits Ofcom from licensing a community radio station if it would overlap with a local commercial service with a coverage area of 50,000 adults or less.

Policy Background and Rationale for Change

2. The Community Radio Order 2004 (hereafter referred to as 'the Order'), which came into force on 20 July 2004, set out the powers under which Ofcom license community radio stations. Since then Ofcom have awarded more than 200 licences, of which 130 stations are currently broadcasting.
3. The Government asked Ofcom to review the provisions of the Order two years after the first licence was awarded. This review took place during 2007 and Ofcom published its findings in its *Future of Radio: the Next Phase* report. This review concluded that, whilst there was a general lack of enthusiasm for any major changes at this early stage of community radio's development, there was demand for minor amendments to the existing licensing regime. The Government responded to Ofcom's recommendations in its *Consultation on Community Radio* in March 2008, a copy of which can be found at:
http://www.culture.gov.uk/images/publications/Consultation_Paper_on_Community_Radio_PDF.pdf

Five year licence extensions

4. One of the recommendations made by Ofcom was that community radio licences should be eligible for a licence extension of up to five years.
5. During the passage of the Order the Government set out our belief that five years represented an appropriate licence period because it provided both security of tenure for licence holders and adequate opportunities for new entrants. However, we said we would keep this decision under review and if, in the future, the case could be made for the licence period to be extended we would consider it.
6. We have examined the case made by Ofcom alongside the responses to their consultation and believe that a case for change has been made. We accept the argument 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 realising their full potential social impact towards the end of their licence period. In addition, we note the specific point made by one respondent that the current five year licence makes financial planning difficult, as well as limiting the potential of operators to attract the capital investment required.

7. We recognise that the decision to offer a licence extension may limit the opportunity for new entrants. In the longer term the proposals in the Digital Britain Final Report for a new tier of ultra-local radio, on the FM spectrum vacated after the Digital Radio Upgrade, will increase the opportunities for new community radio stations to launch. However, in the short term we believe there are benefits to listeners, and the community radio sector as a whole, of extending the licences of existing stations which have already built links with their communities.
8. With the above in mind we now intend to introduce a licence extension scheme for community radio. This will allow licence holders to apply for a one-off extension of their existing licence for a period of up to 5 years. It is our view that a licence extension mechanism, rather than simply increasing the overall licence period, is preferable because it allows Ofcom to take a view on the activities of the licensed station to date and in future.
9. When assessing whether a licence should be granted an extension, we propose that Ofcom should consider the following:-
 - a. the licence holder's ability to maintain the service for the period of the extension; and
 - b. the extent to which the existing licence conditions have been met and the likelihood of a licence condition being breached during the extension period.

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

Rule prohibiting more than 50% funding from one source

10. The Order requires that community radio services obtain their funding from a multiplicity of sources and that no single source of funding may account for more than 50% of the total revenue in a financial year. The policy rationale for this restriction was a) to ensure that a station did not become overly reliant on one source of funding and b) to ensure that a single majority funder could not exert editorial influence over a station's content.
11. Following discussions with Ofcom and industry stakeholders we agreed to reconsider this restriction.
12. We remain committed to the principle that no single funder should be in the position to exercise editorial control over a community radio station; the 50% funding limit was a clear mechanism to secure this. However, we acknowledge the argument that there are a number of existing regulatory restrictions which might deliver the same objective. Ofcom already has powers to revoke a community radio licence if there is evidence that:
 - a community radio station is in breach of the special impartiality requirements set out in Section 320 (1) of the Communications Act;
 - 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.

13. However, these rules do not address our desire to protect community radio stations from over-reliance on a single source of funding. The counter-argument to this being that stations themselves are best placed to make decisions on the sustainability of their funding models.
14. Finally, we note Ofcom's recent decision to allow community radio stations to count volunteer time as income. As a consequence a station can increase its total income and therefore take more funding from a single source in real terms than they had been able to previously.
15. With the above in mind we seek views on whether to remove the restriction prohibiting stations from receiving more than 50% of their funding from any one source in any one year throughout the period of their licence.
16. We do not intend to re-open the debate about the restriction prohibiting a community radio from obtaining more than 50% of its income from advertising and sponsorship. That restriction will remain in force.

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

17. The Order currently prohibits Ofcom from licensing a community radio station if it overlaps with a commercial radio licence with a MCA¹ of 50,000 adults or less. 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.
18. The recent John Myers report, "An Independent Review of the Rules Governing Local Content on Commercial Radio"², commissioned by Government as part of the DBR, recommended that this restriction be lifted. Therefore, we are seeking views on lifting the rule prohibiting a community radio station from being licensed if it would overlap with an existing local radio service for which the MCA contains no more than 50,000 adults.
19. The Myers review also recommended that, should this restriction be lifted, the advertising and sponsorship restriction should then be applied all community radio stations that overlap with local radio services of up to 150,000 adults. We also seek views on this.

¹ 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.

² Available on the Department's website at www.culture.gov.uk/reference_library/publications/6053.aspx

Legal Details

20. Section 262 of the Communications Act 2003 empowers the Secretary of State to make such modifications as he considers necessary to certain legislation³ relating to radio services which are provided primarily for the benefit of the public or particular communities rather than for commercial reasons.
21. The Community Radio Order 2004 modified Part 3 of the Broadcasting Act 1990 to allow Ofcom to grant community radio licences. A future Order following this consultation will be made using powers conferred by sections 262 and 402 of the Communications Act 2003.

Five year extension:

22. Section 253(2) of the Communications Act 2003 shall be applied in relation to community radio licences to permit a single extension of such licences for a period of up to five years.
23. Associated modifications will also be made, for example in relation to section 253(3), by specifying that an application to extend a community radio licence must be made no earlier than eighteen months before the date on which the licence would, but for the extension, expire and must be made no later than six months before that expiry date.
24. Section 253(7) will also be modified in the way that it applies to community radio licences in relation to the criteria which OFCOM must apply, and the licence conditions which OFCOM may impose, when deciding whether to grant an extension (ie viability and licence compliance).

50% limit on funding from one source:

25. In the light of the consultation responses, we shall decide whether to lift this restriction by a new Order.

Overlapping with another local licence serving less than 50,000 adults

26. If an amendment is agreed following this consultation it will be made to the application of section 105(4) of the Broadcasting Act 1990, as inserted by paragraph 5(2) of the Schedule to the Community Radio Order 2004, to:
 - a. Remove the restriction in the modified section 105(4)(a) prohibiting Ofcom from granting a licence to provide a community radio service where, if granted, the licence would overlap with another local licence the potential audience of which does not exceed 50,000 persons aged 15 years or over;
 - b. Provide that the prohibition on advertising and sponsorship contained in the modified section 105(4)(b) should apply to a licence to provide a community radio service which

³ The legislation capable of being modified in this way is Part 3 of the Communications Act 2003 (except parts relating exclusively to television), Part 3 of the Broadcasting Act 1990 and Part 2 of the Broadcasting Act 1996.

overlaps with another local licence the potential audience of which does not exceed 150,000 persons aged 15 years or over.

Regulatory Impact Assessment

27. A partial regulatory impact assessment accompanies this consultation.

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?
3. i) 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 is no more than 50,000 adults, should be lifted?
ii) 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?

Please note that the Department will publish all responses in full, unless specifically requested not to do so. However, all information in responses, including personal information, may be subject to publication or disclosure under freedom of information legislation. If a correspondent requests confidentiality, this cannot be guaranteed and will be possible only if considered appropriate under the legislation.

Any such request should explain why confidentiality is necessary. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

Responses should be made by **25 August 2009** either by post to:

Community Radio Consultation
Media Directorate
Department for Culture, Media and Sport
5th floor
2-4 Cockspur Street
London SW1Y 5DH

Or by email to Community_Radio@culture.gsi.gov.uk

PARTIAL REGULATORY IMPACT ASSESSMENT

1. Title of proposal

1.1 Consultation on amendments to the community radio licensing regime.

2. Purpose and intended effect

Objectives

- 2.1 To:
- i) allow a one-off five-year extension of existing community radio licences;
 - ii) to re-visit the rationale for the current restriction of 50% funding from any one source; and to
 - iii) remove the rule prohibiting Ofcom from licensing a community radio station if it would overlap with a local commercial service with a coverage area of 50,000 adults or less.

Background

- 2.2 The Communications Act 2003 allowed for the establishment, by Order, of community radio. Community radio stations are small-scale, not-for-profit radio stations operated to deliver social gain to the communities they serve. These 'characteristics' are set out in the Community Radio Order 2004.
- 2.3 Community radio stations are granted licences of up to five years. They receive funding from a number of sources, but are prohibited from carrying more than 50% qualifying revenue from advertising or sponsorship. In some areas where a community radio station overlaps with a commercial station with an audience of between 50,000 and 150,000 (over the age of 15 years), they are prohibited from carrying any remunerated advertising or sponsorship. Ofcom are currently prohibited from licensing a service which would overlap with a commercial station with a potential audience of less than 50,000 people over the age of 15 years.
- 2.4 The Department 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 on a wide range of issues, including the current funding restrictions and licensing conditions.
- 2.5 Following this review, Ofcom recommended a number of changes to the existing regulatory regime, including offsetting volunteer time against total income and new powers to allow a five year extension to community radio licences. In the area of funding restrictions, Ofcom considered that it was too early to draw any firm conclusions and that a further review should be undertaken in 2 years' time.
- 2.6 The Government agrees with Ofcom's view that community radio stations should be able to apply for an extension of their licence of up to five years. It is our view that community radio stations are taking longer than we initially expected to establish themselves both as community resources and as financially sustainable radio stations. Therefore, we believe that a five year licence period is not long enough to allow social gain advantages to be fully

realised, and it can also limit the potential of operators to attract longer-term investment opportunities.

- 2.7 The Community Radio Order 2004 restricts community radio services from obtaining from more than 50% of their annual total revenue from one source. Following discussions with Ofcom and industry stakeholders we recognise that stations may be in the best position to make decisions on the sustainability of their funding models. Also, there are alternative regulatory restrictions which should deliver the objective of ensuring that no single funder should be in position to influence content. We therefore seek views on lifting this restriction.
- 2.8 Finally, following the Interim Digital Britain Report the Government commissioned a review of the local radio regulatory regime. This review recommended removing the restriction preventing a community radio licence being awarded if it were to overlap with a small commercial station. It also recommended that should this rule be lifted stations should be banned from carrying any advertising or sponsorship.

Rationale for Government intervention

- 2.9 Changes to the community radio licensing regime can only be made by an amendment to the Community Radio Order 2004.

3. Consultation

Within Government

- 3.1 Not necessary.

Public Consultation

- 3.2 Ofcom have already consulted extensively on this subject, starting in 2007.
- 3.3 This Regulatory Impact Assessment is an appendix to the Government's consultation on these proposals.

4. Options

No Change

- 4.2 No change for licence extensions would mean that all existing community radio licence holders would need to re-apply for their licence at the end of the initial five-year period. Therefore a station which only 3 or 4 years earlier had applied for a licence would be required to do so again.
- 4.3 Leaving the 50% funding from one source restriction in force, will mean that there may be occasions when a community radio station may have to reject essential funding, or a portion of funding.

- 4.4 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 remain prevented from having access to a community radio station.

Change the existing Community Radio Framework – Preferred option

- 4.5 Allowing stations a five-year extension to their licences will allow stations to plan better for their future, in particular in securing funding. It will also provide continuity of service for listeners.
- 4.6 Lifting the 50% funding from one source rule, will allow stations to have a greater autonomy on their own funding decisions. At the same time there are measures in force to ensure that a large funder cannot exercise editorial control over a community radio station.
- 4.7 Allowing community stations to co-exist with small commercial stations of less than 50,000 will allow all communities across the UK to potentially benefit from the social gain which community radio can provide. We anticipate that these community radio stations would not be able to carry advertising or sponsorship, thereby leaving a degree of protection to the existing small commercial stations affected by lifting the restriction.

5. Costs and benefits

Sectors and groups affected

Consumers

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

Local Radio Industry

- 5.2 Advertising and sponsorship restrictions protecting smaller local commercial radio stations will remain. However, should the consultation prove there is an appetite to allow community radio stations to be licensed in areas where a commercial operator with a MCA of less than 50,000, then these small stations, currently 26, will receive some competition for listeners.

Community Radio Industry

- 5.3 These changes will provide some reassurance to community radio stations. It will help their longer-term planning, and provide more freedom in making their own funding decisions.
- 5.4 Should the changes be made, there would be no part of the UK in which a community radio station could not be licensed, subject to spectrum availability etc.

6. Small Firms Impact Test

- 6.1 The change allowing community radio stations to be licensed in areas of very small commercial services, may have a small impact on these small stations. The other changes are unlikely to have an impact on small firms.

7. Competition assessment

- 7.1 There would be no significant impact on competition, although the 5 year extension will mean that an aspiring community radio station in an area with spectrum scarcity may have to wait a further 5 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.

8. Enforcement, sanctions, and monitoring

- 8.1 Ofcom and Government will monitor the impact of the proposed amendments on a regular basis



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