
EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under section 262 of the Communications Act 2003 (“the 2003 Act”), contains provision to create a special regulatory framework for a new category of radio broadcasting services, to be known as “community radio services”. The provision includes modifications to the Broadcasting Act 1990 (“the 1990 Act”) and the 2003 Act.

Article 2(1) defines a community radio service as a form of local sound broadcasting service having the characteristics set out in article 3.

The first such characteristic is that all community radio services are provided primarily for the good of members of the public or of particular communities (a community being defined by article 2(1)) rather than primarily for commercial reasons. This is pursuant to the requirement in section 262(2) (a) of the 2003 Act.

In addition, a service must be provided in order to deliver social gain (article 3(1)(b)). Social gain is defined in article 2 as the achievement of the four objectives set out in paragraph (2) of that article together with the achievement of any other objectives of a social nature, which may include those listed in paragraph (3).

Further characteristics of a community radio service are that it must be provided primarily to serve one or more communities (article 3(2)), it must be run on a not-for-profit or non profit-distributing basis (article 3(3)), that members of the community or communities that it is intended to serve are given opportunities to help run the service (article 3(4)), and that arrangements are made to make the provider of the service accountable for its provision to the community or communities it is intended to serve (article 3(5)).

Article 5 amends the Media Ownership (Local Radio and Appointed News Provider) Order 2003 (S.I.2003/3299) so that it does not apply to community radio services or the licences to provide them. Amongst other things, that Order imposes restrictions on the number of local sound broadcasting licences that any person may hold. This Order imposes alternative arrangements. In relation to community radio licences, ownership is restricted by Part 2 of Schedule 2 to the 1990 Act, as modified by this Order, and by the provisions set out in articles 6 and 7.

The Schedule to the Order, which is introduced by article 4, sets out the modifications with which the provisions in the 1990 Act and the 2003 Act have effect in relation to community radio services.

Paragraph 2 modifies section 86(3)(a) of the 1990 Act (which makes provision as to the duration of local radio licences) to provide for community radio licences to last for a maximum of five years, rather than the maximum of twelve years that local licences usually last for.

Paragraph 3 modifies the effect of section 104 of the 1990 Act by adapting the existing requirements relating to the publication by OFCOM of proposals for new licences to provide services including local sound broadcasting services, and for applications for such licences. The paragraph makes modifications to reflect the fact that community radio services will be provided to serve specified communities rather than particular areas (paragraph 3(a), (b)(i) and (ii) and (f)(ii)). In addition, paragraph 3(b)(iii) and (c) add to the matters that an application for a community radio licence must address. Paragraph 3(d)(i) and (ii) modify the requirements relating to the information that OFCOM may demand from the applicant.

Paragraph 5 modifies the effect of section 105 of the 1990 Act, which sets out special requirements relating to the grant of local licences. Paragraph 5(1) makes modifications reflecting those made by paragraph 3(a), (b)(i) and (ii) and (f)(ii) to section 104 (paragraph 5(1)(a) to (c)). The modifications

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also reflect the characteristics of a community radio service set out in article 3 (paragraph 5(1)(d)). Paragraph 5(2) inserts additional provisions into section 105 relating to the circumstances in which OFCOM may grant a community radio licence and the conditions that they must include in such a licence, if granted. The new subsection (2) states that a community radio licence may not be granted to an applicant who proposes to receive more than 50 per cent. of the income he needs to provide his proposed service from any one source. The new subsections (3) to (6) impose requirements to ensure that the grant of a community radio licence does not unduly prejudice the economic viability of any other local sound broadcasting service. These requirements relate, in particular, to the proportion of his income that any holder of a community radio licence may receive in respect of advertisements or sponsorship. Section 262(3) of the 2003 Act enables an Order such as this to impose prohibitions or limitations on the inclusion of advertisements and sponsored programmes in community radio services. The effect of new subsection (8) is that the restrictions do not apply to sponsorship that is made available for purposes that are mainly philanthropic in nature.

Paragraph 6 modifies the effect of section 106 of the 1990 Act, which sets out requirements as to the character and coverage of national and local services. Paragraph 6(a), (b)(i) to (iii) and (e) to (g) make modifications similar to those made to section 104 by paragraph 3(a), (b)(i) and (ii) and (f)(ii), whilst those made by paragraph 6(b)(iv) relate to characteristics of community radio services. Paragraph 6(c) makes modifications designed to ensure that other broadcasters are not able to exercise an undue influence over providers of community radio services, whilst paragraph 6(d) allows OFCOM to impose licence conditions to ensure that the holder of any community radio licence provides the service that he proposed to provide in his application for that licence.

Paragraph 7 modifies section 126 of the 1990 Act, which supplies various definitions for the purposes of Part 3 of that Act.

Paragraph 8 modifies the effect of Part 2 of Schedule 2 to the 1990 Act, which makes provision relating to restrictions on the holding of licences. In particular, paragraph 8(1) disapplies paragraph 3 of that Part of that Schedule, which would otherwise have the effect that community radio licence holders could receive no more than half their annual income from public funds. Paragraph 8(2) modifies paragraph 4 of the same Part so that a person will be treated as a disqualified person, in relation to a community radio licence, if it appears to OFCOM that any other person is exerting an influence over him that is, or would be, contrary to the public interest.

Paragraph 10 makes a consequential modification to section 245 of the 2003 Act (which, amongst other things, defines certain kinds of radio service), whilst paragraph 11 disapplies sections 314, 355 and 356 of that Act (which make provision as to the character and content of local services and as to the variation of local licences after a change of control).

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