



Department
for Culture
Media & Sport

The Legislative Reform (Further Renewal of Radio Licences) Order 2015

Explanatory Document

25 March 2015

Contents

1. Introduction
2. Background to the Legislative Reform Order
3. Duties of the Minister
4. The Consultation
5. Annexes:
 - a. List of consultation respondents
 - b. Notes of consultation seminars
 - c. Impact Assessment

Introduction

This Explanatory Document is laid before Parliament in accordance with section 14 of the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”), together with the draft of the Legislative Reform (Further Renewal of Radio Licences) Order 2015 (“the draft Order”) which we propose to make under section 1 of that Act.

The draft Order will make provision to amend sections 103B (which covers national radio licences) and 104AA (which covers local radio licences) of the Broadcasting Act 1990 – in order to allow certain commercial radio licences which are due to expire between 2017 and 2021 to be renewed for a further five-year period

The Government is satisfied that requirements of the 2006 Act have been met. This includes that the provision made by the draft Order serves a purpose under section 1(2) (to remove or reduce burdens), that the relevant preconditions under section 3 are satisfied, and that the appropriate consultation has been carried out in accordance with section 13(1).

Background to the LRO

In 2009 the Government published the Digital Britain Report, which, among other things, set out a way forward to achieve a switchover from analogue radio (broadcasting on FM and AM) to digital radio (DAB). That report gave rise to the Digital Economy Act 2010 (“the 2010 Act”) which set out a number of provisions about a future switchover, triggers for considering a switchover, and requirements on radio stations which continue to broadcast on analogue frequencies to boost the take up by consumers of digital radio. Government policy continues to be to support a listener-led migration of radio listening from analogue to digital.

Ofcom, the independent media and communications regulator, licences commercial radio stations, both on digital and analogue. It uses the powers given to it in Part 2 of the Broadcasting Act 1990 (“the 1990 Act”) to grant, renew and terminate licences. The lengths of a licence which Ofcom can grant is set out in the 1990 Act, as well as the number of times, and length of, renewals. The 1990 Act also specifies some conditions which Ofcom must include in those licences, where it is felt important for a public policy purpose. The 1990 Act has been amended on three significant occasions, by the Broadcasting Act 1996, the Communications Act 2003 and most recently by the Digital Economy Act 2010. The amendments made in the 2010 Act allowed Ofcom to renew the licences of commercial radio stations, to support the migration to digital radio.

In order to qualify for the renewal, licensees were required to simulcast (i.e. broadcast simultaneously) the service on an appropriate DAB multiplex (at the same time as broadcasting in analogue). The purpose of the change was to provide a further incentive to commercial radio to support the development of digital radio.

When the Digital Britain Report was published, the Government and radio industry anticipated that a timetable for switchover could be set as early as 2015 and that, with good progress, a switchover could be completed in 2017 or 2018. The proposed seven-year duration for licence renewals in the 2010 Act reflected this expectation, as in such a scenario it made sense for analogue licences to begin to lapse around this time and they would no longer be necessary.

However, the take up and growth of digital radio by the public has been slower than was forecast in the Digital Britain Report. In December 2013, following the completion of work on the Digital Radio Action Plan¹, the Government concluded that it was not the right time to commit to a radio switchover or set a firm or indicative timetable for a future digital radio switchover.

As a result of the Government’s decision in December 2013, the licences of over 60 radio stations which were renewed following the amendments of the 1990 Act, will expire between 2017 and 2021, before the date when a switchover is likely to be possible. These stations would need to bid for their licences through an open,

¹ Digital Radio Action Plan – DCMS 9 January 2014. <https://www.gov.uk/government/publications/digital-radio-action-plan>

competitive process. All three national licences are affected (currently held by Classic FM, TalkSport and Absolute), as are over 60 local licences.

The Government's policy is to support a listener-led migration to digital radio, but has not confirmed there will be a switchover, nor have we set a definite timetable for analogue radio services being switched off. The current position causes uncertainty to licensees who will not be able to say how long they will have to simulcast in analogue and digital.

The Government has taken a number of steps to facilitate progress towards a future switchover including provisions in the 2010 Act and the completion of the joint Government-Industry Digital Radio Action Plan designed to tackle the barriers to an eventual switchover and promote investment in infrastructure to increase national and local DAB coverage in the UK. In the event that we allowed analogue licences to expire, and a new competition was to take place, any new entrant might only hold an analogue licence commencing in 2018 for 3 to 5 years (rather than the normal 12) given that Ofcom has power to terminate licences with two-year notice following the Government confirming a timetable for a radio switchover. This is unlikely to be enough time for a new entrant to be able to achieve a reasonable return on the investment of establishing a new analogue radio service given broadcasting equipment and other start-up costs, compared to the option of broadcasting on DAB and/or other digital platforms.

In order to deal with this issue of analogue licences expiring before the earliest date of a switchover, we proposed one of three solutions, and consulted on the following three options:

1. Do nothing: Not legislate, but instead to allow licences to expire and be re-advertised in the usual way by Ofcom;
2. Allow Ofcom to renew the relevant licences for a further five year period for licences already renewed under s103B (national licences) and s104AA (local licences) of the 1990 Act;
3. Allow Ofcom to renew the relevant licences for a longer period of time not specified above.

Following the consultation, and taking account of the views expressed in responses, we concluded that the most appropriate way forward was to proceed with option 2, and make provision for all affected licences to be renewed for a further five years.

This reflects that the majority of respondents to this consultation were in favour of a further renewal. Importantly, this option also continues to support the Government's long-standing policy on switchover, as the renewal of licences will continue to be on the condition that the licensees also provide the equivalent service on DAB.

The draft Order makes provision to amend sections 103B (which covers national radio licences) and 104AA (which covers local radio licences) of the 1990 Act in order to allow certain analogue commercial radio licences which are due to expire between 2017 and 2021 to be renewed for a further five-year period.

How this LRO will affect licensing of commercial radio stations

- The three national licences have been renewed for a further seven years under section 103B of the 1990 Act. The effect of the draft Order will be to amend section 103B to allow for a further five year renewal.
- A local licence granted before 8 April 2010 may be renewed under section 104A of the 1990 Act for twelve years and further renewed under section 104AA for seven years. The effect of the draft Order will be to amend section 104AA to allow for a further five year renewal. Following a further five year renewal, the earliest a licence in this category would start to expire is from around 2021. The latest a licence in this category would expire is around 2030.
- A local licence granted on or after 8 April 2010 (for a period of twelve years) may be renewed under section 104AA for seven years. The draft Order will not change this. Such licences will be limited to one renewal of seven years. The latest a licence in this category would expire is from around 2029.
- Local licences which were granted under section 104A of the Broadcasting Act 1990 pre- or post-April 2010 which do not provide an equivalent DAB service, will not be eligible for a renewal.

Duties of the Minister

The draft Order is made under section 1 of the 2006 Act. That permits a Minister to make provision which would serve the purpose of removing or reducing “any burden, or the overall burdens, resulting directly or indirectly for any person from any legislation”. In this case, the burdens identified (and quantified in the attached Impact Assessment) are the administrative inconvenience and financial costs on current licensees in bidding for new, short, licences following the expiry of the licences they currently hold.

In addition, there would be significant burdens for Ofcom, the regulator, in terms of time and running the bidding process for 63 licences in a relatively short period of time.

The draft Order makes provision to allow for further renewal of both national and local commercial radio licences, thus avoiding the need for a competition for new licences. This provision will significantly reduce the likely financial costs for the affected licensees of having to re-compete for their licences. The cost to industry of a widespread competitive process is explored in greater detail in the accompanying Impact Assessment, at annex C, but largely, we anticipate that this measure will bring savings to the whole industry of between £2.8 and £7.8 million in total over the period under assessment.

The provisions in the draft Order will also avoid placing a significant administrative burden on the regulator, Ofcom. They would otherwise be required to conduct a competitive relicensing process for the three national and approximately 60 local licences, which has not been conducted on a similar scale since the 1990s, and which Ofcom is unlikely to be sufficiently resourced to undertake at present. The accompanying Impact Assessment shows that the cost of renewing the licences in question will be significantly lower than the cost of re-advertising licences - indeed the cost is likely to be negligible and able to be absorbed into Ofcom’s ordinary course of business.

The Secretary of State considers that the conditions in section 3(2) (where relevant) are satisfied for the following reasons:

1. The policy objective intended to be secured by the provision could not be satisfactorily secured by non-legislative means:

Sections 103B and 104AA of the 1990 Act permit Ofcom to renew a national or local radio licence on one occasion for 7 years. Ofcom, as a statutory body, can only act in accordance with the powers they are granted in legislation. There is no power for Ofcom to renew or extend licences beyond that which they are permitted in statute. Therefore legislation is required in order to amend the 1990 Act to confer on Ofcom the power to further renew the licences in question. There are no alternative, or non-legislative, means by which this outcome could be achieved.

2. The effect of the provision is proportionate to the policy objective:

The Government's policy objective is a listener-led migration from analogue to digital radio. Our view is that following the decision in December 2013 to defer setting a date for a switchover, the commercial radio industry needs a period of stability to complete the build out of DAB coverage, to find a practical digital radio solution for the smallest AM and FM stations, to continue the excellent progress made in working with the car industry under the Digital Radio Action Plan and help increase consumer take up of digital radio. We believe this is best achieved by continuing with the existing policy of allowing commercial radio stations to renew their analogue radio licences for continuing with commitments to DAB and have proposed a further period of five years which is the effect of the provisions of the draft Order. Such a change would avoid the likely period of instability that would follow all national and many local licences coming up for renewal over a relatively short period. As well as being a distraction from its focus on the continued transition to digital radio, the application, bidding and awards process would come at a significant cost to the radio industry, at a time when advertising revenues are still fragile following the recession and the challenges posed by new audio services such as Spotify and Deezer continue to grow. We therefore consider that the allowing a further renewal of analogue licences is a necessary step to deliver listener-led migration to digital radio.

We do not consider there is any appreciable benefit in renewing licences for less than five years. This is because such a short renewal will not create the necessary certainty that licence holders are seeking in order to continue to invest in their businesses or the transition to digital radio.

On the other hand, very lengthy, or even indefinite, licence terms would be a radical change in the structure of analogue radio licensing and could disproportionately benefit existing licence holders, particularly the larger groups, who could conceivably choose to withdraw support for a future digital radio transition in order to extract additional value from the extended FM licence.

Having taken full account of the consultation responses, we believe a further renewal period of five years is the most proportionate response to continuing to meet our continuing policy objective.

3. The provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it:

Allowing further renewal of analogue radio licences will give certainty of direction to industry on Government's continued commitment to a listener-led transition to digital radio, and it will encourage licensees to continue to invest in new content and services as well as in the transition to digital (as they will still be required to simulcast on digital as well as broadcasting on analogue). This is in the interests of listeners, who will benefit from the continued growth in, and accessibility of, digital radio services, which have been able to provide a much greater variety of content to the listener, as the medium allows for the transmission of a much larger number of stations, and information such as playlists, programme content and more. Further to this, we consider that a relicensing process could be detrimental to the listener experience: we note that responses to our consultation have highlighted a real risk that the cost and business impact to licensees of reapplying for their licences would

undermine investment in content. For example, one respondent commented: "The uncertainty of operators having to re-apply for all their licences would dramatically reduce investment in content and in the development of new services, which would in turn severely reduce competition." We therefore believe that re-advertising licences could have a detrimental effect on content, rather than improving the offer to listeners.

At best, listeners will face a period of uncertainty about whether their favourite services such as Classic FM, Talksport and Absolute Radio as well as local stations such as Capital, Clyde and Free FM (Birmingham) will continue, and a risk that some long-standing stations might go off air if licences were allowed to expire and opened to new bidders. It is also worth noting that over 80% of listeners are satisfied with their local commercial radio station². This also suggests there is little consumer benefit to be gained from a widespread re-advertising process. The Government believes the public interest is in avoiding significant market or output disruption to the radio industry and listeners.

Those potentially adversely affected by the draft Order are new entrants who might be interested in applying for expiring analogue licences and who would in effect be prevented from acquiring an analogue licence through a competitive process starting in 2016 and 2017. Whilst there is little to no quantitative evidence on how many, and which, new entrants, might bid for any re-advertised licences, research by Value Partners demonstrated anecdotally that, should these licences be re-advertised, there would be some interest in them from new entrants particularly for the national and large city licenses.

However, whilst there are indicators that some licences would be contested, past licence competitions show that only around 10% of re-advertised licences have been awarded to a new operator/entrant. Incumbents will have been on air for 20 years or longer and will have built up a strong track record and listener allegiance to support their applications. New entrants may struggle to convince Ofcom that they will be able to launch a new service which will be successful over the likely period of the license. In addition, new entrants have other options for acquiring an analogue licence via other means, for example purchasing it from an existing licensee. New entrants do therefore have alternative entry points to the radio market.

We do not believe that the hypothetical benefit to listeners and industry of a small number of new services outweighs the cost to the wider industry and to listeners of a wholesale re-advertisement process. We therefore consider that, taken as a whole, the provision in the draft Order strikes a fair balance between the public interest and the interest of any person who might be adversely affected by it.

4. The provision does not remove any necessary protection:

The provision does not remove any necessary protections, for either the radio industry or public.

² Attitudes to Local Radio (a summary of the findings of a quantitative survey of local radio listeners), Ofcom, July 2013

5. The provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise:

The provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

6. The provision is not of constitutional significance:

The provision is not of constitutional significance.

Consultation summary

The Secretary of State carried out a consultation on the proposal between 1 November and 1 December 2014 in accordance with section 13 of the 2006 Act. The details of the consultation and the responses received are covered in more detail in part 4.

Parliamentary procedure

The Secretary of State recommends that the affirmative resolution procedure (see section 16 of the 2006 Act) should apply to the making of the draft Order.

While the draft Order makes a relatively small change to the existing regulatory framework of radio services, the provision to be made will amend primary legislation. We therefore consider that the affirmative resolution procedure is the most appropriate procedure to ensure proper Parliamentary scrutiny.

Compatibility with the European Convention on Human Rights

The Secretary of State is content that provisions of the draft Order are compatible with the European Convention on Human Rights.

Compatibility with the legal obligations arising from membership of the European Union

The Secretary of State is satisfied that the proposals are compatible with the legal obligations arising from membership of the European Union.

Territorial extent

Broadcasting is a reserved matter and this measure therefore applies across the whole of the United Kingdom.

Binding the Crown

The Secretary of State is satisfied that the proposed change will not bind the Crown.

The Consultation

Written call for consultation responses

The consultation on the proposals took place between 1 November and 1 December 2014. We invited written responses from all those licensees affected, as well as any other interested parties.

Consultation seminars

In addition to the request for written responses, we held three consultation seminars in order to explore the views of industry in greater detail. These were held in London, Edinburgh and Birmingham. All affected licensees were invited, as were the licence holders for all remaining commercial analogue stations, in addition to a number of trade bodies, consultants and other interested parties.

Research into competitive impact of the consultation options

Due to the potential impact on market competition – including on potential new entrants – we also commissioned Value Partners to produce research on the competition and market impact of each of the options we consulted on. The results of this work will be published separately.

Responses

We received 13 unique written responses to our consultation, 7 from radio stations/groups and the remainder from a mixture of industry bodies and consultants who work within the industry.

Of these 13, six provided a full response to the questions we asked, five gave a partial response, and two did not directly address the issue. However, in addition to the written responses we received significant oral feedback from around 30 delegates across the three seminars that we held in Birmingham, Edinburgh and London, and this is reflected in our summary of responses.

Of the written responses, two supported option 1 (do nothing and allow the affected licences to be re-advertised). Reasons for this included that this option could provide an opportunity for new entrants to compete in the analogue commercial radio market, potentially resulting in an increase in the range and diversity of analogue commercial radio services.

The remainder of the responses were in favour of renewing the affected licences:

Two written responses supported option 2 (5 year renewal). Support for this option was primarily because of a view that it would strike a balance between maintaining the sector's competitiveness, and providing certainty and stability in a challenging economic landscape and at a time when the industry is working towards a digital transition. It was also felt this option would generate significant cost savings for licensees, as they would not be required to re-compete for their licences.

Eight written responses support option 3 (indefinite renewal, or until a switchover). This included the response from Radio Centre, the representative body for many commercial radio stations. Those respondents felt this option would provide the strongest possible signal of support for further investment in digital radio, provide greater stability for the sector, and would provide absolute certainty for industry in the drive towards a digital future for radio.

The cost saving to industry was also cited to justify support for this option, as licensees (as in option 2) would not have to re-compete for their licences, which respondents felt would be a costly procedure, which could divert from investment in content and digital radio.

One response was equally supportive of option 2 and 3.

Feedback from the seminars also suggested there is widespread support for renewal of the affected licences: over three quarters of attendees supported either option 2 or 3. However, a small number of delegates were either openly supportive of option 1, or expressed that whilst they were supportive of renewal, equally they were not averse to the re-advertisement of licences as they felt their station would not have any difficulty of securing a new term through a competitive process.

In addition to the formal consultation, we commissioned Value Partners to research the impact of each of the options in terms of the effect on competition and wider market impacts. Value Partners interviewed a number of industry representatives. In their report to DCMS, Value Partners concluded that, in their view, option 1 was more likely to promote the interests of industry and consumers, due to the potential to stimulate greater competition between existing incumbents and new entrants to the market. Although these views have informed our thinking around what is the most appropriate way forward, we do not find the arguments persuasive and believe that the research underplays the impact of maintaining stability in the commercial radio sector to support investment in content and in the transition to digital.

We have consulted Ofcom on this issue as the proposals relate to their functions, and subsequent to this Ofcom has not expressed a view on the merits of the proposed amendment.

Conclusion

Having fully considered all of the consultation responses, both written and oral, and having reflected on the findings of Value Partners' research, we acknowledge there are merits to allowing the licences to be re-advertised and for all comers to compete for the available licences - including the potential to stimulate new entry and to refresh the local radio market. However, whilst there are indicators that some licences would be contested, evidence shows it is unlikely in most cases that anyone other than the incumbent would be successful. Past licence competitions show that only around 10% of re-advertised licences have been awarded to a new operator/entrant. This is partly because, having been on air for anything up to 19 years, incumbents have likely built a good track record of delivering content that listeners enjoy, and as such have compelling existing evidence to draw upon in bidding for a licence. Without that same track record and evidence of listener satisfaction, a new entrant may find it harder to demonstrate it could deliver a similarly successful service. We think it is therefore unlikely that a new entrant could

win a competition in most cases. Whilst it is possible a small number of new stations may come into existence as a result of a wholesale re-advertisement of licences, Government does not consider that the hypothetical benefit to listeners and industry of a small number of new services outweighs the cost to the wider industry of a wholesale re-advertisement process. It is worth noting that over 80% of listeners are satisfied with their local commercial radio station³. This also suggests there is little consumer benefit to be gained from a widespread re-advertising process.

Further, whilst the DAB platform is now more embedded within the radio ecology than it was at the time the 2010 Act was enacted (for example with greater availability of digital stations and continued growth in digital listening), evidence from the consultation demonstrates that renewal of analogue licences remains a strong incentive for operators to continue to invest in digital radio. For example, one respondent commented: "Such an AM & FM expiry comes at a critical investment period for digital migration. It is the point in time when most emphasis on the development of DAB as the de facto standard for broadcast radio will be taking place. Introducing licence instability into the sector at this sensitive time would be highly destabilising to the revenues that are supporting DAB development just at the point where the radio industry is overall navigating the sector wide structural changes brought about by web and mobile." Government therefore continues to believe that a further renewal for those analogue licences is necessary in order to continue to drive momentum towards digital.

Having considered in detail the range of views expressed in the consultation responses and the evidence available to us about the cost to industry of a wholesale re-advertising process, we remain of the view that option 1 could impose significant costs on industry at a time when we are trying to maintain certainty of direction and encourage the sector to maintain investment in digital radio. We think these costs are likely to outweigh any potential benefits of allowing licences to be re-advertised, and this option would also risk sending mixed signals to the radio industry about the future transition to digital radio.

Whilst there are also merits to option 3 - including that it would provide licensees with absolute certainty up until the point of a future switchover, a date for which has yet to be set and depends upon progress in getting listeners to switch to digital - we believe this is a fundamental change to the regulatory framework for commercial radio which requires a much more detailed examination. In addition, the consultation has demonstrated that FM licences remain valuable assets that are largely profitable for licence holders: whilst the value of FM licences will decline as digital listening grows, we do not think it appropriate to allow renewals on a perpetual basis given that decisions on the future transition to digital and the timing of a switchover have yet to be made.

Allowing a renewal for a further 5 years also avoids the risk of entrenching different tiers in the radio licensing system, providing those licensees who have benefitted from a renewal a greater level of economic certainty than those licensees who cannot, or do not wish to, provide an equivalent service on DAB.

³ Attitudes to Local Radio (a summary of the findings of a quantitative survey of local radio listeners), Ofcom, July 2013

Annex A - List of written consultation respondents

Name	Organisation
Graham Phillips	N/A
Alex Gray	Two Lochs Radio
Ian Hickling	Transplan FM
William Rogers	UKRD
Andrew Bingham MP	APPG Commercial Radio
Grae Allan	Bauer
Jimmy Buckland	UTV
Matt Payton	RadioCentre
Laurence Harrison	Digital Radio UK
Will Harding	Global
Colin Everitt	Communicorp
Daniel Rose	Freelance media consultant
1x anonymised respondent	N/A

Annex B – Notes of consultation seminars

Birmingham Consultation Seminar note

14.00-16.00, Monday 17th November, Free Radio, Birmingham

In attendance:

Ian O'Neill OBE	Head of Radio, DCMS
Sarah Baylis	Policy lead, DCMS
Matt Payton	Director of External Affairs, RadioCentre
Ben Walker	External Affairs Manager, RadioCentre
Arun Bajaj	Radio XL
Michael Betton	Lincs FM Group
James Kotak	Sabras Radio
Kirsty Leith	Global Radio
David LLoyd	Orion Media
Phil Riley	Orion Media

Introduction

DCMS officials set out the intention of the seminar outlined, which was to explore in greater depth industry views on the three proposed options in the Government's consultation on renewal of analogue commercial radio licences.

Due to the competition issues raised, DCMS has also commissioned Value Partners to produce research on the impact on competition in the market of each proposed option. This will inform the final policy decision and the report will be published on the DCMS website in due course.

Contextual issues

Delegates were asked:

- *What are the biggest challenges currently facing the sector?*
- *What has been the impact on individual businesses of the renewals permitted by the 2010 DEA?*
- *Impact on the wider sector of the renewals permitted by the 2010 DEA?*

Representatives said challenges included:

- It had been a difficult last half decade and radio is reliant on strength of the economy
- Audiences are stable, but in longer term decline
- Decline in national advertising income. Radio is a 'price taker' and not in a position to negotiate – it is a secondary medium and so must accept the prices offered
- Digital Economy Act 2010 (DEA) introduced the requirement to broadcast on DAB in exchange for a further renewal – but broadcasting on DAB is expensive
- For some operators, in total, there has been a squeeze on operating costs, profits, and audiences

- Others felt the DEA had not had a significant impact but commented on the cost of being on a DAB multiplex. Other stations represented at the seminar were experiencing the same squeeze on national revenue
- It was added that being on DAB is not beneficial financially
- Small local stations are also experiencing competition from community radio stations – they are competing for the same small business advertising revenue
- News of a potential second downturn was also a concern
- It was commented that Ofcom are doing a good job overall but current music formats are prohibitive so the current consultation on this is welcome
- The BBC is considered to be a significant competitor due to their significant marketing power. BBC Radios 1 & 2 considered to be offering a service that replicates what the commercial sector does, which is unhelpful
- Growth in the range of audio services also presented challenges for commercial radio, as well as the growth of BBC services
- Community radio was a significant concern for some small local operators. For the smallest local stations, share of advertising revenue has significantly declined as community radio stations did not exist in their area when their commercial licence was originally granted – so the competitive environment has changed
- Concern about community radio shared across all industry representatives present at the meeting
- Other delegates expressed concern about the BBC's 'indirect' advertising power
- It was noted however that the changes brought in by the DEA had also had a positive impact, improving the viability of a number of stations, and enabling investment in online, content, and DAB. Others noted however that in some cases the regulatory changes had already been factored into companies' acquisition models if/when purchasing stations, and was built into pricing early

Option 1: Do nothing

Delegates were asked:

- *What would be the impact on competition between radio groups if they have to rebid for licences?*
- *What would be the likely cost impact, including on investment in content, on stations bidding for licences?*
- *What assessment would you make of the number and extent of potential new entrants who may wish to bid for a newly advertised FM local or national licence?*
- *What might be the advantages to industry, and benefits to listeners, of re-advertising the licences?*

Comments included:

- Lengthier licence renewal would be advantageous so that companies can get a return on their investment. It was felt that option 1 would have a negative impact on long term, continued investment – in some cases owners may simply not continue to invest in content or DAB
- Some representatives considered that a five year extension (option 2) may not be long enough. Some companies have invested in DAB for a long time and there is currently still no economic return

- There is less of an incentive in particular for ‘heritage’ FM licences to go on DAB – digital listening to these stations is far below the share of digital listening nationally. A longer licence renewal would allow for a return on the investment in DAB
- Others stated that only a very small proportion of their listeners were via DAB, and that the station was only on DAB because of the link with further renewal
- Conversely, other delegates – whilst broadly supportive of option 2 – said that they were unafraid of the prospect of licence re-advertisement. Some stations’ licences are not linked to DAB through licence renewal, but they are still investing in DAB
- Option 3 caused some concern, for example because of concern that a digital radio switchover may not happen very quickly or may not happen at all. Long term, some feel that the continuation of ‘beauty parades’ is a better/fairer way to mete out licences
- Other delegates did not feel there were any advantages to incumbents of a beauty parade (e.g. as an opportunity to refresh a station’s offering or look again at the business) – given the sector agrees the future of radio is very much digital, it was not anticipated that in many cases there would be significant interest in local analogue licences
- Analogue licences are also less valuable than they used to be – so the environment would not change significantly as a result but operators would have been subjected to a lot of disruption. It was also noted that there are few instances historically of incumbents not winning back their licences
- It was commented that perhaps how localness in radio is protected should be reshaped, given that the licensing regime is less prescriptive following deregulation in recent years
- Some delegates noted that option 1 would be a significant distraction from business as usual. A significant amount of Programming time would be diverted to producing a bid should option 1 be followed through, and this would impact adversely on the production of content
- It would also absorb a significant amount of management time. As well as diverting resource from the business, it would divert funds, and this would be replicated across the industry across multiple applicants
- Delegates again raised that it was difficult to monetise additional DAB coverage - there is often little to no return on this investment
- Conversely it was noted that stations didn’t have to remain on DAB – they could remove their service from DAB and re-compete for an FM licence if DAB was such a concern.

Option 2: renewal of 5 years or longer/indefinite

Delegates were asked:

- *What are the advantages to industry of allowing a period of further renewal?*
- *What are the benefits to listeners of a further period of renewal for stations?*
- *To what extent do you think renewing licences will prevent new entrants? How likely/viable do you think other routes into the market are, particularly for small operators?*
- *Are there any distinct differences between a licence extension of five years and (i) one of a longer period or (ii) an indefinite period? What would be the impact on the sector and on listeners, for example, of an indefinite renewal?*

Comments included:

- It was restated that analogue licences are becoming less and less valuable
- Some delegates felt that a five year extension was about right, as even though shorter licence lengths could cause uncertainty, a five year extension would not preclude further licensing activity
- An indefinite extension (until a switchover) would preclude new entrants altogether and would be inappropriate if a switchover is further delayed or if it doesn't happen at all
- It was felt by some that not allowing renewal would just cause uncertainty for listeners, clients, advertisers. Owners wouldn't necessarily continue to invest
- It was also noted that very few licences have changed hands anyway so it would be a lot of disruption for no real reason
- Other delegates commented that the timing proposed in option 2 was slightly arbitrary – some operators' sense is that switchover will be later than the early 2020s anyway
- Switchover itself is also perceived as too uncertain by some investors, so it would offer greater clarity and direction if licences were just made indefinite until a switchover
- One person suggested tying in the renewal length with multiplex renewals, where the intention is to extend until 2030.

Edinburgh Consultation Seminar note

11.00 – 13.00, Thursday 20th November, Radio Forth, Edinburgh

In attendance:

Ian O'Neill OBE	Head of Radio, DCMS
Joe Lawrence	Policy Advisor, DCMS
Graham Bryce	Bauer
Adam Findlay	New Wave Media
Blair Crofts	Kingdom FM
Darren Stenhouse	Kingdom FM
Spencer Pryor	Eclipse Sports Radio Limited
Tracey McNellan	Global
Matt Peyton	RadioCentre
Ben Walker	RadioCentre

Introduction

DCMS officials set out the intention of the seminar outlined, which was to explore in greater depth industry views on the three proposed options in the Government's consultation on renewal of analogue commercial radio licences.

Due to the competition issues raised, DCMS has also commissioned Value Partners to produce research on the impact on competition in the market of each proposed option. This will inform the final policy decision and the report will be published on the DCMS website in due course.

Contextual issues

Delegates were asked:

- *What are the biggest challenges currently facing the sector?*
- *What has been the impact on individual businesses of the renewals permitted by the 2010 DEA?*
- *Impact on the wider sector of the renewals permitted by the 2010 DEA?*

Feedback included:

- Biggest challenge facing the radio industry is the recession and the fragile economic recovery. This creates uncertainty. Also issues around dual transmission costs
- The growth of the digital market place has increased competition for advertising massively. This is going to hit radio harder in the next ten years than it has in the past decade, as the younger generation (who listen to radio less) become consumers
- Advertising sales– 1 company, Group M hold 60 % of the market and therefore can massively influence industry pricing structure
- Other stations however were optimistic, particularly now the referendum decision has dispelled a lot of uncertainty around the radio industry in Scotland
- Cost of entry onto DAB massively prohibitive – a 5 year extension is therefore the natural step to take

- Fragile market place at the moment, with new competitors entering the radio industry on new platforms i.e. internet stations, that are not subject to the same regulation as traditional analogue radio
- Some representatives expressed a view that a switchover date should be totally market driven and not industry driven – therefore the whole premise of a digital switchover is fundamentally flawed
- The fundamental differences between TV and radio have not been understood in using the TV switchover as a template for radio
- Largest obstacle to the growth of DAB is price. Multiplexes are not priced competitively, with an uneven playing field in place – i.e. some stations get preferential rates over others
- The most critical issue in persuading commercial radio to fully embrace digital is to demonstrate the commercial value and viability of it
- Concern that advertising revenue is migrating online
- DAB is still too expensive. Transmission costs are a significant part of this (2nd greatest cost after staff salaries) and if reduced could make a noticeable difference in demonstrating the value of digital
- Ofcom DAB trial very interesting - £300/£400 a month would be a considerable saving
- Digital streaming is becoming a massive rival to DAB for the digital market
- The overriding push for digital should be completely market driven – a market point not a policy point. The criteria for a switchover should definitely be over 50 % listening on digital, allowing for a more organic transition
- BBC R1 and R2 are squeezing commercial radio's audience share
- However, BBC's MOU builds out more coverage and is very important in promoting digital.

Option 1: Do nothing

Delegates were asked:

- *What would be the impact on competition between radio groups if they have to rebid for licences?*
- *What would be the likely cost impact, including on investment in content, on stations bidding for licences?*
- *What assessment would you make of the number and extent of potential new entrants who may wish to bid for a newly advertised FM local or national licence?*
- *What might be the advantages to industry, and benefits to listeners, of re-advertising the licences?*

Option 2: renewal of 5 years or longer/indefinite

Delegates were asked:

- *What are the advantages to industry of allowing a period of further renewal?*
- *What are the benefits to listeners of a further period of renewal for stations?*
- *To what extent do you think renewing licences will prevent new entrants? How likely/viable do you think other routes into the market are, particularly for small operators?*
- *Are there any distinct differences between a licence extension of five years and (i) one of a longer period or (ii) an indefinite period? What would be the impact on the sector and on listeners, for example, of an indefinite renewal?*

Feedback included:

- Potentially disastrous to do nothing. It would cost operators a lot of money to re-bid, and would also create massive uncertainty in the digital world in the long term
- In theory not renewing would create more competition, however in practice this might not happen as the value in analogue licences comes from selling them, rather than running a radio station
- There is room for competition on digital though
- Cost of reapplying for a licence is high, and a phenomenal draw on resources, particularly for a small, independent station
- Radio has not moved into digital because they believe in it necessarily, but rather because of Government/Ofcom encouragement and legislation. Some stations may have moved onto digital as a 'rear-guard protection for analogue licences'
- It was commented that analogue and digital licences should be uncoupled – this will remove the burden of dual transmission and allow for a more natural progression to digital
- There are DAB black spots across the UK, and the format does not provide the 'bouquet of stations' that the public expects
- Price point is a huge reason why take up on multiplexes is low
- In addition, the multiplex 'gatekeeper' ownership structure is flawed – they are run for profit, and do not price carriage in such a way that would encourage new entrants to the digital market
- In conclusion – industry in conflict
- Re-advertising could bring back the spectre of the '6 Music problem' i.e. upsetting fans who have become extremely loyal to 'their' station
- It was commented however that some city stations have moved away from their local service commitments and are basically becoming quasi-national networks in all but name. New licences should be issued – not issue licences 'for life'
- 12 year licences could be too short though and would make shareholders nervous
- Commented that some groups have become unhealthily dominant in the market
- However it was thought that national commercial brands have created these networks in order to compete with the BBC nationally – it is the only way for commercial radio to come close to matching the spending power of the BBC
- DAB will grow once switchover has been announced. At the moment everything is in limbo; will we even persevere with DAB or will DAB + come into the equation?
- In conclusion some representatives commented that either Option 2 or 3 would work best; longer licence renewals would be better
- Others considered Option 2 to be most appropriate, as stations should have to justify their existence at some point
- It was also commented that automatic renewal is not necessarily in everyone's game plan.

London Consultation Seminar note

14.30-16.30, Wednesday 26th November, RadioCentre, London

In attendance:

Ian O'Neill OBE	Head of Radio, DCMS
Sarah Baylis	Policy Lead, DCMS
Joe Lawrence	Policy Advisor, DCMS
Surjit Singh Ghuman MBE	Panjab Radio
Jason Bryant	Town and Country Broadcasting
Jimmy Buckland	UTV
Grae Allan	Bauer Digital Radio
Tony Lit	Sunrise Radio
Daniel Rose	Freelance Media consultant
Colin Everitt	Communicorp (UK)
Will Harding	Global Radio
Matt Jamison	Amazing Radio
James Posner	Adventure Radio Group
Travis Baxter	Bauer Digital Radio
Ford Ennals	Digital Radio UK

Introduction

DCMS officials set out the intention of the seminar outlined, which was to explore in greater depth industry views on the three proposed options in the Government's consultation on renewal of analogue commercial radio licences.

Due to the competition issues raised, DCMS has also commissioned Value Partners to produce research on the impact on competition in the market of each proposed option. This will inform the final policy decision and the report will be published on the DCMS website in due course.

Contextual issues

Delegates were asked:

- *What are the biggest challenges currently facing the sector?*
- *What has been the impact on individual businesses of the renewals permitted by the 2010 DEA?*
- *Impact on the wider sector of the renewals permitted by the 2010 DEA?*

Representatives said:

- One of biggest challenges in recent years has been the plethora of platforms that have emerged in the digital age i.e. streaming, internet radio etc. which are now competing with the industry for revenue and listeners
- Uncertainty around analogue licences is hugely destabilising for radio
- Advertisers are becoming increasingly uncertain about buying spots on radio and this will only be made worse if the confusion about the future of analogue radio licences continues

- Licences that did not benefit from Digital Economy Act 2010 (DEA) either were not contested or were simply re-awarded to the incumbents. Therefore some delegates were not supportive of the idea that re-advertising the licences would be good for competition in the market
- However, none of the larger city licences have come up since the DEA so it is very difficult to say whether we can use the ones that have gone to competition as examples. It is likely that if a licence with a large TSA and which was therefore likely to generate a profit for the bidder came onto the market, that there would be fierce competition for such a licence
- It was said that London DAB is already profitable – and it was therefore questioned whether digital and analogue licences should be uncoupled as it seems digital now has a viable business model and no longer needs the same level of support
- Beauty Parade model of awarding radio licences may well be flawed if the current incumbents often do simply keep their licence – this isn't necessarily good for increasing the diversity of radio. A recurring theme of discussion was also whether the current licensing framework was still appropriate to secure a range of diverse and local content.
- When the Greater London AM licence came onto the market, a fierce competition ensued, with 5 new formats bidding for the licence. There is some evidence therefore of the hunger that still exists for analogue licences
- At the moment it could be argued that there is a two tier system of radio licensing: operators who do not take up the option of a renewal tied to provision of a DAB service will not be granted the same certainty as those who do
- FM licences are desired by some DAB-only operators who wish to reach an audience that is not yet on digital
- But the point at which FM licences become available may be the point at which they are no longer very valuable due to growth in digital
- However was also felt that incumbents still value the analogue platform and DAB renewal may simply have been used to protect their FM frequencies. Consideration should be given to placing further requirements on operators who tie their FM renewal to provision of DAB
- At the moment radio is doing well, with record listening figures. Could be argued that this is demonstrative of the fact that listeners are satisfied with the content of radio
- Investment is needed for traditional radio stations to embrace new formats such as online and mobile apps – this cannot happen if there is uncertainty about the future of FM
- A lot of smaller stations, who are kept off digital by prohibitive costs, are fully reliant on the FM format and therefore are extremely concerned about the future of their FM licences
- Some delegates questioned whether the current system of 'Gate keepers' on the DAB multiplexes working and whether Ofcom allow commercial organisations to decide whether the competition should broadcast on their multiplex
- Radio would not exist without Government regulation and licensing is an integral part of the radio business. Some therefore commented should licences be automatically extended, for free, to companies that should have accounted for the cost of bidding for licences in their business plans
- The stability that has been provided to the UK radio industry by the automatic extensions written into the DEA can be very favourably compared to the state of radio in the rest of Europe.

Option 1: Do nothing

Delegates were asked:

- *What would be the impact on competition between radio groups if they have to rebid for licences?*
- *What would be the likely cost impact, including on investment in content, on stations bidding for licences?*
- *What assessment would you make of the number and extent of potential new entrants who may wish to bid for a newly advertised FM local or national licence?*
- *What might be the advantages to industry, and benefits to listeners, of re-advertising the licences?*

Option 2: renewal of 5 years or longer/indefinite

Delegates were asked:

- *What are the advantages to industry of allowing a period of further renewal?*
- *What are the benefits to listeners of a further period of renewal for stations?*
- *To what extent do you think renewing licences will prevent new entrants? How likely/viable do you think other routes into the market are, particularly for small operators?*
- *Are there any distinct differences between a licence extension of five years and (i) one of a longer period or (ii) an indefinite period? What would be the impact on the sector and on listeners, for example, of an indefinite renewal?*

Feedback included:

- Was questioned whether option 1 (do nothing) implied a change in Government policy on digital radio. It could also be argued however that it implied that Government no longer believed renewals tied to DAB provision were still needed to incentivise digital growth, as DAB is now a significant platform for operators
- Indefinite renewal (Option 3) would not necessarily be *indefinite*, as the 2-year withdrawal clause would still exist to cater for a future digital switchover
- If digital is the future of radio, then surely it is not worth putting licences out to competition, as they will soon be worthless
- If a new entrant to the radio market were to win an analogue licence, it would be extremely challenging to grow an audience in 5 years (Option 2) and then migrate that audience over to digital
- Others felt however that the re-advertisement of licences was not necessarily catastrophic and not necessarily unwelcome in all quarters
- At the moment DAB does not provide an adequate revenue stream for those broadcasters that operate on that medium alone – consequently it would be beneficial to DAB operators to have the opportunity to bid for analogue licences
- It is possible that opening analogue licences to new bidders would increase radio provision for underrepresented groups i.e. ethnic and religious minorities – this would surely be good for the industry and the country as a whole?
- If licences are not renewed for any period of time, and it seems that digital switchover is a distant prospect, then Government investment in digital will be severely undermined
- The argument that re-advertisement raises standards is unproven – standards are driven by consumer demand – if the public was unhappy with the current offering, they would not be listening in record numbers

- In terms of cost, rebidding for a licence could cost as little as £15,000 to as much as £100,000/150,000 – the larger city licences would probably warrant the higher level of spending as these licences are likely to be heavily contested
- Some questioned whether this was just throwing money away when history shows that the licences will probably be re-awarded to the current holders
- Commercial radio relies on advertising to survive. Advertisers favour strong brands e.g. Kiss, Heart, Capital – if these brands were to disappear or contract due to loss of licences, revenue from advertising may reduce
- Some current formats maybe overlapping – putting licences out to competition may provide a wider range of formats to the listener
- A 5-year renewal would not actually be for 5 years – when ‘relevant date’ and time spent preparing licence application is factored in
- If Government policy is digital switchover, why not provide indefinite licence rollover to allow for any other delays that may occur. Again, it will not be indefinite, due to Ofcom’s powers to terminate licences in the event of a switchover.



Department
for Culture
Media & Sport

4th Floor, 100 Parliament Street
London SW1A 2BQ
www.gov.uk/dcms