

THE LEGISLATIVE REFORM (RENEWAL OF NATIONAL RADIO MULTIPLEX LICENCES) ORDER 2022

EXPLANATORY DOCUMENT BY THE DEPARTMENT FOR DIGITAL, CULTURE, MEDIA AND SPORT

1. Introduction

- 1.1. 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 (Renewal of National Radio Multiplex Licences) Order 2022 (“the draft Order”), which we propose to make under section 1 of that Act.
- 1.2. The purpose of the draft Order is to amend section 58 of the Broadcasting Act 1996 to allow the two national commercial radio multiplex licences (due to expire in 2023 and 2028 respectively) to be renewed to 31 December 2035. A radio multiplex (network) is the means by which digital radio services (i.e. radio stations) are broadcast. A radio multiplex consists of a number of stations bundled together to be transmitted digitally on a single frequency in a given licensed geographic area - in this case across the UK.
- 1.3. 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).
- 1.4. This explanatory document contains information for the Delegated Powers and Regulatory Reform Committee and the Business, Energy and Industrial Strategy Committee.

2. Background to the Order

- 2.1. The Broadcasting Act 1996 (“the 1996 Act”) sets out the legislative framework for the regulation of digital radio services. Ofcom issues two types of digital radio services licence under powers granted to them by Part II of the Act:
 - a digital sound programme licence for a person(s) wishing to operate a digital radio service (station); and
 - a radio multiplex licence for a person(s) wishing to provide a radio multiplex¹ (i.e. a digital radio network) service.

¹ Digital radio services are multiplexed for broadcast and so differ from analogue radio (FM or AM) broadcasting where a single encoded signal is broadcast on an analogue frequency. A multiplex compresses and bundles a number of radio services (and service information) into one frequency and transmits it digitally. The frequency is then decoded by either a domestic or an in-vehicle digital radio receiver. This technique (multiplexing) allows radio broadcasters to use the spectrum allocated to radio more efficiently, giving consumers more choice when listening to digital radio.

- 2.2. Radio multiplex services are provided and licensed in terms of national, local (typically county-wide) and small scale (typically sub-county) geographic coverage. A radio multiplex licence holder is responsible for arranging the transmission of services (i.e. radio stations) and for contracting with radio stations that want carriage on the network.
- 2.3. There are currently two UK national commercial digital radio multiplexes with 22 digital radio stations broadcasting on each network. The D1 multiplex is operated by Digital One Ltd (owned by Arqiva) and the licence for this network was first issued in November 1999. The second licence is held by Sound Digital Ltd (a consortium of Bauer, Wireless Radio and Arqiva) and was issued in February 2016. These two national multiplexes (networks) are an essential means of distributing national commercial radio stations and programming to audiences across the UK. They have been successful in opening the national airwaves to more national commercial radio services and in allowing commercial radio to compete with the BBC.
- 2.4. The general view from the UK radio industry, as summarised in the recent Digital Radio and Audio Review Report², is that digital radio listening will continue to increase and that terrestrial free to air digital/DAB radio will continue to be a significant platform for distributing radio services and content to consumers for the foreseeable future. The DAB digital radio platform also supports certain key public policy outcomes: enabling the reach of public service broadcasting to audiences and the efficient use of available radio spectrum to broadcast more stations, which provides listeners with more choice of content and caters to a wider range of consumer tastes.
- 2.5. The licensing system for national (and local) commercial digital radio multiplex services is set out in Part II of the 1996 Act. Section 58(1) requires that a radio multiplex licence issued by Ofcom is granted for a 12-year period. Section 58(2) of the Act allowed for one renewal of a radio multiplex licence if the licence was originally granted within 10 years of the 1996 Act's commencement³. This was for a period of 12 years if the licence was granted within six years of the 1996 Act or for eight years if issued between six and 10 years of the legislation's commencement.
- 2.6. The national radio multiplex licence currently held by Digital One Limited (D1) was first issued by the Radio Authority in November 1999 and was granted with the possibility of one renewal of 12 years as it was issued within six years of the 1996 Act's commencement. The D1 licence was renewed by Ofcom in 2011 and runs to November 2023. The second national commercial radio multiplex licence, currently held by Sound Digital Limited (SDL) commenced in February 2016 and will expire in February 2028. The SDL

² DCMS - Digital Radio and Audio Review - October 2021 <https://www.gov.uk/government/publications/digital-radio-and-audio-review>

³ Section 58 of the Broadcasting Act was commenced on 1 October 1996 (SI 1996/2120 art. 4(1), Sch. 1 para. 1)

licence currently has no renewal option, since it was issued 18 years after the commencement of the 1996 Act.

- 2.7. Currently Ofcom has no power to renew these licences further and under the current statutory scheme would need to re-advertise the D1 licence currently held by Digital One Ltd for a 12 year period through an open competition were this Order not to be made.

Changes to the provisions on licence renewal

- 2.8. On 22 July 2021 the government launched a public consultation seeking views on the approach to the future licensing of the two UK national commercial radio multiplex licences expiring in 2023 and 2028 on the terrestrial digital radio (DAB) platform. The consultation ran for 8 weeks and closed on 14 September 2021. Respondents were asked to provide their views on the options below:
- Option 1: **Do nothing** - not to legislate, but instead to allow licences to expire and be re-advertised by Ofcom in accordance with the existing legislation;
 - Option 2: Allow a **12-year renewal** for the licence held by Digital One Ltd and a **7 year renewal** for the licence held by Sound Digital Ltd, to align both expiry dates to December 2035;
 - Option 3: Allow a shorter **7 year renewal** for the licence held by Digital One Ltd and **2 year renewal** for the licence held by Sound Digital Ltd to align both expiry dates to December 2030.
- 2.9. The government did not state a preferred option. In addition, respondents were also asked for their views on whether Ofcom should have the power to require a higher level of coverage for the national multiplex licences, either as a condition of renewal or in relation to a future switchover or if it should, as now, be left to market forces; and on whether there should be restraints on future price increases for carriage fees charged by the multiplex operators and who they should cover.
- 2.10. The consultation received 10 responses in total from a range of stakeholders including existing radio multiplex operators, large commercial radio broadcasters and small commercial radio operators including broadcasters of national Asian stations. The number and source of responses reflects that interest in this area is generally limited to a small number of industry stakeholders with a technical understanding and who are most directly impacted by the licensing process. The views of all the stakeholders have been taken into account in developing the Government's approach.
- 2.11. The majority of respondents supported legislating to allow for an automatic renewal of the licences, arguing that this would provide commercial radio broadcasters with certainty and stability for their businesses and the confidence to continue to invest in digital services. These respondents

maintained that readvertising the two licences would be too disruptive, costly and involve significant management resources being diverted to the application process at a time when commercial radio is dealing with significant business challenges due to the detrimental economic impacts of the Covid-19 pandemic on advertising and sponsorship revenues; and given the historic lack of interest in operating digital radio multiplexes, the effort involved in this process could result in no change with little benefit to commercial radio operators and listeners.

- 2.12. Some respondents cited the high barriers to entry - due to spectrum constraints and the necessity to either use Arqiva's existing nationwide transmission network or build an entirely new national digital radio network to meet coverage requirements - as key factors why there has been little interest in operating a national radio multiplex and no viable applicants from outside the radio industry. Both routes to market would involve considerable financial costs and delivery risks for a potential new bidder. Respondents were also concerned that a broadcaster operating a national multiplex would favour their own stations and shut out multiplex capacity to other broadcasters. Smaller radio broadcasters that have carriage on the national multiplexes (including Asian stations) said very clearly that they preferred a continuation of the current arrangement with a neutral non-radio organisation that has no conflicts of interest as the multiplex operator.
- 2.13. In terms of duration, the majority of respondents were strongly supportive of a longer renewal for both licences: 12 years for the D1 licence and 7 years for the SDL (D2) licence to a common 2035 end date. They argued that, even with changes to listeners' audio consumption habits, free to air digital (DAB) radio will remain the most important platform for listeners to access radio services and content into the late 2030s. A commitment to a longer term renewal has the significant advantage of providing national commercial radio broadcasters with certainty and stability about the future of these national digital radio networks and this in turn would give broadcasters the confidence to continue to invest in their digital services, thereby benefiting listeners.
- 2.14. None of the consultation respondents - either those in favour or those against automatic licence renewals - supported a shorter renewal of the licences (7 years for the D1 licence and 2 years for SDL licence) to a common end date of December 2030 (aligning with the expiry of local commercial DAB multiplex licences). Respondents could see no advantage in reorganising radio spectrum for the national networks and 56 local commercial DAB multiplexes at the same time. They also thought a wholesale change would be unnecessarily disruptive for both commercial radio operators and listeners, and difficult for Ofcom to carry out.
- 2.15. A small minority of the consultation respondents favoured the do nothing option and for Ofcom to re-advertise national radio multiplex licences in an open competition. They argued a competitive process could result in benefits such as more affordable carriage fees for stations on the networks, more

stations gaining access to the networks, technological innovation and possible improvements to coverage; even if a competitive process were won by the incumbent licensees. They also argued that without a competitive bidding process there would be little incentive for the existing multiplex operators to attract new stations, improve network coverage or innovate the transmission technology.

- 2.16. The list of consultees is:
- Arqiva
 - Bauer
 - Global
 - Like Media Group
 - Nation Broadcasting
 - Panjab Radio
 - Sunrise Radio
 - United Christian Broadcasters (UCB)
 - UK DAB Networks
 - Wireless Radio
- 2.17. A more detailed analysis of the consultation outcome is available on the gov.uk website.
- 2.18. Having carefully considered the consultation responses it is the government's view that the process of an open competition is not in the best interests of the commercial radio sector or consumers at this time, particularly given the current challenges and uncertainty being faced in the context of the Covid-19 pandemic. Therefore the government intends to give Ofcom the power to renew the two national commercial radio multiplex licences and not to hold an open competition.
- 2.19. The Government proposes to make the draft Order using the power contained in section 1 of the 2006 Act. The draft Order amends section 58(2) of the 1996 Act to allow for the renewal (or further renewal) of national radio multiplex licences to 31 December 2035.

Relevant date

- 2.20. The draft Order amends section 58 to provide that an application for a renewal (or further renewal) (as provided by the draft Order) must not be made later than the relevant date.
- 2.21. Section 58(12) of the 1996 Act provides that the 'relevant date' is the date determined by Ofcom by which they would need to publish a notice to start a

competitive licensing process for the expiring licence. Subsections (12) and (12A) apply so as to enable Ofcom to set a timetable for renewing a licence which allows enough time to hold a competition for it if the licence is not renewed. There also needs to be enough time for a new licensee to establish their service when the old licence expires, to ensure continuity of service for listeners.

2.22. Given that one of the national radio multiplex licences is due to expire in November 2023, the existing requirement for Ofcom to give a year's notice of a relevant date would not allow a date to be determined which would be enough in advance of the expiry date. This Order therefore allows Ofcom to give less than a year's notice in this case.

2.23. The amendment will allow Ofcom to carry out an effective renewal process in relation to the D1 multiplex licence that expires in November 2023.

Power to remove or reduce burdens (section 1 of the 2006 Act)

2.24. Section 1 permits a Minister to make any 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". The burdens identified - which have been quantified through a de minimis impact assessment - are the administrative inconvenience and financial cost to the current licensees in having to bid for new licences following the expiry of the licences that they hold at present. In addition, there would be significant burdens for Ofcom, the regulator, which would have to run the bidding process for the licences.

2.25. The draft Order makes provision to allow for the further renewal of both national commercial radio multiplex 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. We anticipate that this measure will bring an annual net direct benefit to business of approximately £0.045m over the next 10 years.

2.26. The provisions in the draft Order will also avoid placing an administrative burden on the regulator, Ofcom. They would otherwise be required to conduct a competitive relicensing process for the two national radio multiplex licences.

2.27. We acknowledge that the current multiplex licence holders (and Ofcom) will need to incur some costs in applying for and processing renewals, but these costs will be significantly lower than the cost of re-advertising licences - indeed the cost is likely to be negligible.

3. Explanation why the conditions in section 3(2) of the 2006 Act are satisfied

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

- 3.1. Section 58(1) of the Broadcasting Act 1996 allows for a radio multiplex licence to continue for a 12 year period. Section 58(2) of the 1996 Act allows for one renewal of a radio multiplex licence if the licence was first granted within 10 years of the Act's commencement, for a period of 12 years if granted within six years of the 1996 Act or for eight years if issued between six and 10 years of the legislation's commencement.. The D1 licence was renewed by Ofcom in 2011 and runs to November 2023. The second national commercial radio multiplex licence, currently held by Sound Digital Limited (SDL) commenced in 2016 and will expire in February 2028. The SDL licence currently has no renewal option since it was issued 18 years after the commencement of the 1996 legislation.
- 3.2. Ofcom, as a statutory body, can only act in accordance with their statutory powers. They cannot renew the licences further than they are permitted by legislation. Therefore, there is no non-legislative solution by which the intended outcome could be achieved - legislation is required to amend the 1996 Act to confer on Ofcom the power to renew licences.

The effect of the provision is proportionate to the policy objective

- 3.3. The policy objective is to provide clarity and long term certainty to the commercial radio sector about the national radio multiplexes. The Government believes that this policy objective is best achieved by allowing a renewal of the national commercial digital radio multiplex licences as provided for in the draft Order. The continuation of this arrangement will provide commercial radio with stability at a time of uncertainty in the industry and national broadcasters with the confidence to continue to invest in their digital services and support the further development of digital radio.
- 3.4. Free to air terrestrial digital (DAB) radio supports certain key policy outcomes such as enabling the reach of commercial radio broadcasting to audiences and the efficient use of available radio spectrum to broadcast more stations, which provides listeners with more choice of content and caters to a wider range of consumer tastes.
- 3.5. The two UK national commercial DAB radio multiplexes have underpinned investment by commercial broadcasters in widening the choice of national radio services available to consumers. As recently as 2013, there were only four national commercial radio services broadcasting via the Digital One network (SDL/D2 network launched in 2016). The two multiplexes now carry 45 national digital radio stations covering a wide range of formats and genres. An important consequence of the availability of the national commercial DAB platform has been to provide national commercial radio broadcasters with the ability to compete more effectively with BBC radio services.

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

- 3.6. We believe that allowing the further renewal of national multiplex licences is in the public interest. It will enable national commercial broadcasters carried on the networks to continue to invest in new content and services for their listeners, as well as committing further resources towards their digital radio offers - underlining the Government's continued commitment to a listener-led transition to digital radio.
- 3.7. Renewal is also in the interests of listeners. Long term renewals of the radio multiplex licences will support existing channel line ups and maintain access to their favourite stations and the positive experience for audiences. In contrast, a competitive bidding process risks causing significant disruption to existing station line-ups on the multiplexes that could affect the listener experience and cause confusion and the migration of audiences to alternative digital options.
- 3.8. Re-advertising the licences has much more potential to be disruptive for the multiplex licensees by diverting investment and management time to the application process. A competitive bidding process could risk causing significant disruption to commercial radio. National commercial broadcasters would have to devote management resources to deal with the uncertainty that it could create as they would be forced to re-consider the distribution options for their national radio stations. It may have detrimental impacts on their businesses as advertisers and sponsors would potentially have to reassess their promotional strategies for reaching the audiences delivered by these national stations.
- 3.9. The only group potentially adversely affected by the draft Order are prospective new entrants who might in the future be interested in applying for expiring national radio multiplex licences who would in effect be prevented from acquiring such a licence through a competitive process. Some respondents to the consultation drew attention to the lack of interest in operating a national radio multiplex (there has also been little interest in operating local commercial radio multiplexes) in part due to the high barriers to entry.
- 3.10. There have been no market, technical or regulatory changes in recent years that would in our view make it more attractive for an external party to operate a national radio multiplex.
- 3.11. Barriers to entry are high due to spectrum constraints and the need to either use Arqiva's existing UK wide transmission network or build an entirely new national digital radio network to meet coverage requirements. Both of these routes to market would involve significant financial cost and delivery risks for a potential new entrant. In addition, national radio multiplex licences are let by Ofcom following a 'beauty contest' (there is no provision for cash bids) and a

new bidder would need to secure a more attractive line up of national radio services than the incumbent multiplex operators. Given all the above factors, our conclusion is that we would not expect any new entrants to the market if there was an open competition.

- 3.12. The Government therefore believes that the provisions in the draft Order strike a fair balance between the public interest and the interests of any person who might be adversely affected by them.

The provision does not remove any necessary protection

- 3.13. The provisions amended by the draft Order do not contain any necessary protections either for the industry or the public and therefore no protections are removed. Services provided under the licences renewed under these provisions must still comply with all other rules and requirements set by Ofcom including competition requirements and compliance with Ofcom's technical standards.

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

- 3.14. The provisions amended by the draft Order do not confer any rights or freedoms, either for the industry or the public, and therefore the draft Order does not prevent any person from continuing to exercise any right or freedom.

The provision is not of constitutional significance

- 3.15. The provision is not of constitutional significance. The draft Order amends the regulatory framework for the licensing of national radio multiplexes which is not a matter of constitutional significance.

4. Other Ministerial duties under the 2006 Act

Consultation Summary

- 4.1. The consultation was published on 22 July 2021 and ran until 14 September 2021. Information about the consultation is available on the gov.uk website and the full text of the Government's response is set out at Annex A.

Parliamentary Procedure

- 4.2. The Minister of State for Media, Data and Digital Infrastructure, Julia Lopez MP, recommends that the affirmative resolution procedure should apply in relation to the making of the draft Order.

- 4.3. The draft Order makes relatively small and straightforward changes to the existing regulatory framework. However, the provision to be made by the draft Order will amend primary legislation and we therefore consider that the affirmative resolution procedure is the most appropriate procedure to ensure proper Parliamentary scrutiny.

European Convention on Human Rights

- 4.4. The Minister of State for Media, Data and Digital Infrastructure, Julia Lopez MP, has made the following statement regarding Human Rights: “In my view the provisions of the draft Legislative Reform (Renewal of National Radio Multiplex Licences) Order 2022 are compatible with the Convention rights.”

Territorial Extent and Territorial Application

- 4.5. Broadcasting is a reserved matter. The Broadcasting Act 1996, and the amendments made by the draft Order, apply to the whole of the United Kingdom.

5. Impact

- 5.1. The estimated financial impact on businesses is below £5m a year. As such, a full Impact Assessment has not been published alongside this Explanatory Document. Instead, an internal De Minimis Assessment was conducted and found that there was a small annual net direct benefit to business of approximately £0.045m over the next 10 years.
- 5.2. There is no impact on charities, voluntary bodies or the public sector. The changes do not, for example, impact on community radio stations licensed by Ofcom.

6. Contact

- 6.1. Alex Petrovic at the Department for Digital, Culture, Media & Sport can answer any queries regarding this instrument. Telephone: 07887 355672 or email: alex.petrovic@dcms.gov.uk

Annex A: Consultation Response



Department for
Digital, Culture,
Media & Sport

National Commercial Digital Radio Multiplex Licences

Consultation Response

5th January 2022

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Summary

Following a consultation published in July 2021 on the approach to the future licensing of the two UK national commercial digital (DAB) radio multiplexes, the government intends to make changes to section 58 of the Broadcasting Act 1996 to allow Ofcom to renew the two licences, which are due to expire in 2023 and 2028 respectively, for a further period to December 2035. This change will provide national commercial radio operators with long term certainty and give them confidence to invest in national digital services, which will be beneficial for listeners.

Introduction

1. The government has [consulted](#) on the approach to the future relicensing of the two national commercial digital radio multiplexes.
2. The past decade has seen a marked shift in the consumption of radio. Improvements in the coverage of digital radio networks and investment by broadcasters in new digital services as well as by vehicle manufacturers in fitting digital radios as standard in new cars has benefited listeners. Listening via digital devices is now the primary means of accessing radio services, with recently published RAJAR (Radio Joint Audience Research) figures for Q3 2021 showing that digital accounts for a 65.8% share of all radio listening.
3. National commercial digital radio stations are broadcast via two national DAB multiplexes, operated by Digital One Limited and Sound Digital Limited respectively. The network operated by Digital One Limited (owned by Arqiva) was launched in 1999 and carries simulcasts of the three national analogue commercial services (Classic FM, TalkSport and Absolute Radio) and 17 other digital services, and reaches around 91% of UK homes. The network operated by Sound Digital Limited (owned by a consortium - Arqiva 40%, Wireless Group 30% and Bauer Media 30%) was launched in 2016 and reaches 83% of UK homes. The two national commercial digital radio multiplexes have become an essential means of distributing national commercial radio services and programme content and have been successful in opening the national airwaves to more commercial radio services and allowing commercial radio to compete with the BBC. Between them, these two networks provide access to 40 free-to-air national commercial digital radio stations.
4. The Broadcasting Act 1996 paved the way for the licensing of digital radio by creating the structure for digital radio multiplex and station licensing. Commercial digital radio broadcasting services are regulated by Ofcom, which issues broadcasting licences setting out the conditions which apply to licence holders. There are two

types of digital radio licence issued by Ofcom: a digital radio multiplex licence⁴ for those wishing to provide a multiplex service nationally or for a given local area; and a digital sound programme licence for those wishing to provide a digital radio service.

5. The Broadcasting Act 1996 only allows national multiplex licences to be renewed on one occasion if the licence was issued within the first 10 years of commencement of the legislation. Therefore, the national DAB multiplex licence issued in 1999 to Digital One Ltd for two terms of 12 years is set to expire in November 2023. The Sound Digital Ltd (D2) licence, issued in 2016, runs for a single term of 12 years until March 2028. Under existing legislation, Ofcom does not have a power to renew the current national multiplex licences beyond their current expiry dates and would need to offer the licence currently held by Digital One Ltd for a 12-year period through an open competition which would need to take place and be completed by summer 2022.
6. Our consultation ran from 22 July to 14 September 2021. We sought views on whether the government should make provision to allow national commercial digital radio multiplex licences to be renewed for a further period, and if so, what the length of this period should be. Specifically, we requested views on three options:
 - Option 1 - Do nothing:** allow the two national radio multiplex licences to expire and be re-advertised through an open competition for a 12 year period by Ofcom in accordance with the existing legislation;
 - Option 2 -** amend the Broadcasting Act 1996 to allow a 12 year renewal for the licence currently held by Digital One Limited and a shorter 7 year renewal for the licence currently held by Sound Digital Limited, to align both expiry dates to a common December 2035 date;
 - Option 3 -** amend the Broadcasting Act 1996 to allow a shorter 7 year renewal for the licence currently held by Digital One Limited and a 2 year renewal for the licence currently held by Sound Digital Limited, to align both with the expiry dates of the local DAB multiplex licences in December 2030.
7. We also sought views on whether Ofcom should have the power to require a higher level of coverage for national licences (either as a condition of renewal or in relation to a future switchover) or whether this should, as now, be left to market forces; and on whether there should be restraints on future price increases for carriage fees.
8. The wider business environment for commercial radio has been particularly disruptive and challenging in the past 18 months and is the context in which this

⁴ A radio multiplex licence holder is responsible for arranging the transmission of services and for contracting with radio stations that want carriage on the network.

consultation has taken place. The COVID-19 pandemic has underlined the important role of national commercial radio as a trusted source of news and information for UK audiences as well as in delivering content to entertain. However, the wider economic impacts due to the pandemic have had a significant effect on commercial radio revenues since March 2020, and there are some signs that this may have accelerated some of the disruptive long-term structural changes facing traditional media.

Summary of responses received

9. The consultation received 10 substantive written responses in total from a range of organisations within the commercial radio broadcasting sector - Arqiva, the current operator of the D1 multiplex; the three largest commercial broadcasters: Global, Bauer and Wireless; other commercial broadcasters: Sunrise Radio, Panjab Radio, United Christian Broadcasters (UCB), Nation Radio and Like Media and UK DAB networks, a joint venture between Nation Radio and Ash Elford. The list of organisations which responded can also be found at Annex A and non-confidential responses have been published on our consultation page. We are grateful for all the responses provided.
10. Overall a majority (six) of the respondents - **Arqiva, Global, Bauer, UCB, Sunrise Radio and Panjab Radio** - supported option 2: the proposal to amend legislation to allow an automatic renewal of the national multiplex licences. Four respondents - **Wireless, Nation Radio, Like Media and UK DAB Networks** - preferred option 1: the proposal for allowing the national multiplex licences to expire and Ofcom to re-advertise them in an open competitive bidding process. None of the consultation respondents supported option 2: a shorter renewal of both national multiplex licences to align the end dates with the expiry of local DAB multiplexes in 2030.

Consultation Feedback on Option 1

11. Six respondents did not support this consultation proposal. They argued that several factors mean it would be a more expensive, risky and disruptive option for commercial radio operators, and inappropriate at a time when continuity and stability is more beneficial for commercial radio operators to support a recovery from the impacts of the Covid-19 pandemic.
12. Specifically, the following points were made:
 - a. taking steps to re-advertise the two licences would be disruptive and involve significant costs, time and management resources being diverted to the application process by the multiplex operator(s), and administration costs and time by Ofcom to manage the process; and given the historic lack of

interest in operating digital radio multiplexes from new entrants the resource intensive effort could all be potentially for no change and little benefit to commercial radio broadcasters or listeners, at a time when broadcasters need to focus on rebuilding revenues following the impacts of the pandemic.

- b. a new bidder would face a very significant constraint because they would have to use Arqiva's existing national broadcast networks and therefore would in effect have to offer the same or a very similar level of network coverage, as well as have to pay Arqiva fees for access to/use of the network; and therefore a new operator would be unlikely to be able to offer a substantially cheaper price to commercial broadcasters/stations.
- c. a new bidder proposing to construct a new national digital radio network would face the significant costs of building it and maintaining it throughout the licence period, which would be passed on to the stations being carried, and would require time to build it (as well as the substantial risk of non-delivery of the new network).
- d. listeners already benefit from a wide range of national stations covering all major music and speech genres on the two national multiplexes, existing multiplex operators have adapted to changing technology by introducing more services in DAB+ on the SDL/D2 multiplex, and new national stations have been introduced by the multiplex operators.
- e. a risk that a national commercial multiplex licence operated solely by a radio organisation would prioritise capacity for their own radio services on the network and shut out other commercial broadcasters from the market.
- f. re-advertising the licences would mean that listeners risk losing access to familiar and well-loved stations.

13. **Four respondents supported option 1** and expressed views in favour of allowing the national multiplex licences to expire and for the expiring licences to be re-advertised by Ofcom and awarded after an open competition.

14. Specifically, these respondents argued that:

- a. a competitive licensing application process is a good thing, even if it were won by the incumbent licensees, and would drive positive behaviours and result in benefits such as: more affordable carriage fees for stations on the network(s), more stations gaining access to the national networks, greater technical innovation and some improvements to network coverage.

- b. even if readvertising the licences did not result in a new entrant, a competitive process could provide an opportunity to seek stronger commitments to improve costs, coverage and access for new stations from the incumbent multiplex operator(s).
- c. if the national multiplex licences were to be re-advertised competitively, one respondent - Nation Radio - indicated that it would be interested in bidding. Nation Radio believes that it has built experience in running local DAB multiplexes and has multiplexing capability through a subsidiary which would enable it to bid to operate a national multiplex.

Consultation Feedback on Option 2

15. Six industry respondents were strongly supportive of option 2: a **12-year renewal** for the licence held by Digital One Limited and a **7 year renewal** for the licence held by Sound Digital Limited, to align both expiry dates to December 2035. In support of this option respondents argued that:
- a. DAB radio is forecast to remain an important platform for listeners to consume radio programme content into the late 2030s.
 - b. A longer term renewal for the national networks would provide broadcasters with long term certainty for their business over their national DAB carriage and in turn this will give them confidence to continue to invest in their national digital services, which will be beneficial for listeners.
 - c. A renewal to 2035 provides national stations with stability.
 - d. Arqiva asked DCMS to consider a 12-year renewal of the Sound Digital licence because there is no real need to align the end date of these licences, based on the expectation that DAB will be relied upon throughout the 2030s. Wireless are unclear why the SDL/D2 licensee would not be offered a 12 year renewal.
 - e. Although they preferred a competitive advertisement, Wireless argued that Digital One Ltd should be required to extend network coverage in return for an automatic renewal of its licence and transparency in capacity allocation and pricing of capacity.
16. Four respondents did not support option 2. They argued that for the D1 multiplex an automatic renewal of the licence would maintain the incumbent operator's position and this would not incentivise the multiplex operator to innovate or improve costs or coverage. Nation Radio stated: *"...it offers little incentive to the incumbent multiplex operator to attract new entrants to radio broadcasting or improve coverage.."*. Wireless stated that it wasn't clear how a renewal for the incumbent operator of the

D1 multiplex rather than holding an open competition for the licence would better support a wider transition to digital. Like Media expressed a view that a renewal of multiplex licences would have the advantage of maintaining consistency for operators and listeners; but that maintaining the position of the current D1 licence holder would be detrimental for the sector in the long run.

Consultation Feedback on Option 3

17. There was no support from any respondents - either those who favoured an automatic renewal of the licences or those who preferred re-advertising the licences in open competition - for option 3 in the consultation: a shorter **renewal of 7 years for the D1 licence and 2 years for the SDL licence** to a common end date of December 2030, to align with the expiry of the local commercial DAB multiplex licences. Respondents could see no advantages in reorganising radio spectrum for the two national networks and 56 local commercial digital radio multiplexes at the same time. The common view was that this type of wholesale change would be unnecessarily disruptive for commercial radio, disruptive for listeners and difficult for Ofcom to carry out. Panjab Radio stated that providing clarity through until 2035 is more helpful than setting the date at 2030.

Consultation Feedback on coverage improvements

18. Feedback on the issue of coverage improvements was mixed. Some of the respondents in favour of allowing a renewal of the national multiplex licences argued that any future coverage improvements should be a commercial matter for negotiation between the radio stations and the multiplex operators, since as now the costs of any increased coverage would be passed on to service providers. Bauer commented: *“the reality is that any coverage obligations on the multiplex operator are in fact obligations on the radio services they carry, as any increase in cost to the multiplex operator from additional transmitters is simply passed on (plus a profit margin) to the radio station”*.
19. Whilst a renewal was not their preference, Wireless argued that Digital One Ltd should be required to extend coverage of the D1 network in return for an automatic renewal of its licence, but without passing on excessive additional cost to broadcasters/service providers. In the view of other respondents who favoured an open competition for the D1 multiplex licence, the network’s future coverage should be comparable to existing levels and expectations, if won by a new entrant or by the incumbent operator. Nation Radio stated: *“We would expect that to build the adoption of the DAB platform amongst listeners that coverage of any newly licenced DAB multiplex would need to be broadly the same or superior to that of the incumbent multiplexes to provide a satisfactory listening experience”*. Like Media

would like to see coverage of the SDL/D2 multiplex increase to be a closer match to the D1 network.

Consultation Feedback on future carriage fees price restraints

20. There was no consensus in the feedback on the issue of whether there is a need for price controls on future increases in carriage fees or whether it should be left to market forces. We received no direct comments from respondents on the merits or disadvantages of the price mechanism options outlined by DCMS in the consultation document.
21. Arqiva and Global did not see the case for price control protections and felt it should be left to the market - arguing that existing flexibility with commercial negotiation works and Ofcom already has broad powers and can act on these if it believes there is a problem. Global stated that *“direct price regulation is not necessary in Global’s view. Service providers are generally large radio groups who are capable of negotiating their own contracts. Mux operators are already under obligation to promote fair and effective competition and service providers can go to Ofcom if they think mux operators are acting unfairly.”*
22. UCB also preferred the ability to negotiate - *“though a rate card approach has certain advantages, the freedom to negotiate outside of that rate card continues to be invaluable.”* Panjab Radio also mentioned flexibility of being able to negotiate - *“Back in 2009, Panjab was on D1. There was a commercial negotiation on price and D1 showed flexibility. Also, when Panjab wanted to break the contract and came off, a fair settlement was sorted out and there wasn’t a termination payment (which there could have been). Similarly with SDL Panjab did a deal and Arqiva was flexible and changed some of the contract terms. When Panjab came off SDL, it was dealt with fairly by Arqiva in difficult circumstances”.*
23. Nation Radio and UK DAB Networks thought that a competitive relicensing process would drive more competitive terms for broadcasters. UK DAB Networks stated: *“This question really emphasises why it is important that the two national commercial DAB multiplexes are readvertised. In a competitive application format, applicants will be incentivised to offer competitive terms.”*
24. Two smaller broadcasters (Like Media and Sunshine Radio) stated that there should be some form of price protection for smaller stations. Like Media: *“ Carriage Fees differ widely between service providers currently. I believe a rate card agreed with Ofcom should be decided, and then any yearly increase capped at RPI. This is to provide a fair competition to all service providers”*; and Sunshine Radio: *“I think there*

should be a fee cap mechanism or a subsidised fee potentially, because if just left to market forces, Stations like Sunrise Radio will be unsustainable as a National radio station, which effectively will reduce choice for the public”.

25. Wireless thought that the current multiplex operator should publish a clear process for how capacity will be allocated in the renewal terms if there is a rollover of the D1 multiplex licence and that pricing of capacity on the network should be fairly equalised among the service providers.

Government's Response

26. We have fully considered all of the consultation responses.

Response on Option 1

27. In terms of option 1 (the do-nothing option), we have carefully considered the feedback. Those in favour of this option primarily argued that competition for national multiplex licences is a good thing and that a number of benefits for service providers and consumers would arise from a competitive re-advertisement process. However, respondents only provided limited evidence and examples to support these statements.

28. We recognise that there could be potential benefits associated with re-advertising the national commercial digital radio multiplex licences: it could provide an opportunity for commercial radio to review the best way of organising the networks and consider alternative arrangements for securing commitments on DAB+ (services have already been introduced on the SDL multiplex and some local multiplexes) or access to more stations or improvements in coverage.

29. We acknowledge that were a new and credible bidder for the national licences to emerge this could incentivise the incumbent operator(s) to improve their offerings. However, given the historic lack of interest and barriers to entry we are not convinced that there would be a strong level of interest in bidding for either of the national multiplex licences from external non-radio new entrants, were these licences to be re-advertised. A new entrant would, because of spectrum constraints and cost, have to operate effectively the same network services using a majority of sites that Arqiva currently uses. As a result the scope to invest to improve services, reduce costs for stations carried and generate profits over the lifetime of the licence would be limited.

30. We have noted other potential disadvantages associated with re-advertising the national multiplex licences cited by respondents. The government generally agrees with the view that to re-advertise the licences would involve additional costs, time and management resources being directed into the application process and this risks the imposition of added burdens on the industry at a challenging time for commercial radio. The government is aware of the historic low levels of interest in operating digital radio multiplexes and has noted the argument made by respondents that there is a real risk of a competitive application resulting in little or no change. As previously indicated, the government has noted the view put forward about the high barrier to entry to operate a national multiplex for any new bidder because of the requirement to either use Arqiva's existing transmission network or build an entirely new national digital radio network. We also believe that the

argument that both of these routes to market would involve significant financial costs and risks for a new entrant carries weight. It is difficult to see how a new operator could offer significantly better terms to national broadcasters or better coverage for listeners. After careful consideration, on balance, we believe the disadvantages outweigh the advantages with respect to this option and agree with the arguments that this would be a more expensive and disruptive option for commercial radio at the current time.

Response on Renewal Options 2 and 3

31. With respect to option 2, the responses we received clearly set out a range of important benefits of renewing the national multiplex licences, primarily giving commercial broadcasters the long-term certainty to plan and develop services as radio's transition to digital continues. We agree that this is a particularly important consideration given the challenging business environment facing commercial radio broadcasters in recovering from the negative impacts of the COVID-19 pandemic, with the dependence on advertising, and in responding to long term structural trends such as the increased competition from online music streaming services.
32. We have noted the lack of support from respondents - either those in favour or against automatic licence renewals - for option 3 (a shorter renewal of 7 years for the D1 licence and 2 years for SDL licence to a common end date of December 2030, to align with the expiry of the local commercial DAB multiplex licences) and the reasons behind the views: wholesale change of radio spectrum for the two national networks and 56 local commercial digital radio multiplexes at the same time would be unnecessarily disruptive. On balance we agree with respondents that a short-term renewal is less well suited to meeting government objectives.
33. In terms of the length of time that the national multiplex licences should be renewed, we have taken into account the feedback from industry which indicated that a longer renewal, of 12 years for D1 and 7 years for SDL to 2035, was clearly preferable as this would deliver several important benefits: certainty to the industry and listeners and the minimising of disruption and costs, while maintaining the focus within industry in the direction of digital. This longer term support is consistent with the findings in the recently published joint industry and government Digital Radio and Audio Review, which indicate that free-to-air digital (DAB) radio is forecast to remain an important means by which listeners consume radio programme content through to the late 2030s. We agree that this approach supports the government's policy objective of working towards a digital future for radio and supporting industry through this transition.

Our Conclusion with respect to the 3 options

34. Having considered the responses to the ‘do nothing’ option 1 and renewal options 2 and 3 we believe that on balance there are stronger arguments that support the long-term renewals of the two national commercial multiplex licences. They are by no means conclusive but in the main we agree with the views expressed that adopting this approach to the future licensing of these important platforms for commercial radio will provide more clarity and security for the industry (including for advertisers and investors), while maintaining the momentum towards digital. This decision would give additional certainty on the future licensing of this key platform for commercial radio, which we have noted is important given the challenging business environment facing commercial broadcasters in adapting to the disruption from online competitors and recovering from the impacts of the pandemic.

Response on Coverage

35. We have carefully considered the feedback from respondents on the issue of seeking a commitment on coverage improvements to the national commercial DAB networks as part of either a competitive bidding process or an automatic renewal. Given the maturity of digital radio and the existing levels of build out of the commercial radio networks, we are minded to agree that it is primarily a matter for the multiplex operator and service providers to determine, unless and until there is a decision on a future switch-off of FM services⁵. We recognise that any changes in the coverage footprint of these networks must be commercially viable for the stations carried. Therefore we have decided that we will not include any provisions in relation to mandating increased levels of coverage for either the D1 or SDL (D2) networks in the Legislative Reform Order.

Response on Carriage fees

36. We have carefully considered the feedback from respondents on whether there should be restrictions on the ability of the national commercial DAB multiplex licence holders to increase the charges levied on the stations carried on the networks. We acknowledge that larger commercial radio broadcasters have a stronger position of market power from which to negotiate the terms and length of carriage arrangements with the multiplex operator and that they wish to retain that freedom. We recognise that smaller broadcasters do not necessarily have the same ability to leverage market power in a negotiation with a national multiplex operator and that some would ideally like some form of protection on future prices and that there are existing powers for Ofcom to intervene. No strong case was made to create a mechanism to limit any future carriage fee increases by national multiplex operators.

⁵ The Digital Radio and Audio Review, published on 21 October.
<https://www.gov.uk/government/publications/digital-radio-and-audio-review> This recommended that there should be no switch-off of FM services until at least 2030

There are existing arrangements for services to use if they have a complaint about what they consider to be unfair treatment by a multiplex operator and in the absence of strong representations otherwise from the sector we have therefore decided not to include any provisions in relation to restricting rises in future carriage fee prices in the Legislative Reform Order.

Next Steps

37. In terms of the next steps, in the consultation document we indicated that if the government decided to proceed with option 2 or option 3 we would carry out a second consultation for the purposes of section 13 of the Legislative and Regulatory Reform Act 2006. However, we now consider that the consultation published on 22 July 2021 satisfies the requirements of section 13 noting that any further consultation would involve a consideration of exactly the same proposals as already consulted upon. We have therefore concluded that a further consultation is unnecessary and that the responses provided to the consultation we have carried out have given us sufficient evidence to proceed with a Legislative Reform Order to implement the government's conclusions set out in this response.
38. If you have any further comments about the consultation process or this response document, please contact us by **15 January 2022**. Our preferred method is by email at nationalmultiplexconsultation2021@dcms.gov.uk.
39. Subject to the necessary approvals, the government will now proceed to make an amendment via a Legislative Reform Order to the relevant legislation – namely section 58 of the Broadcasting Act 1996 – in order to:
 - a. Allow Ofcom to carry out a renewal of the D1 national commercial digital radio multiplex licence for an additional 12 years and a renewal of the D2 national multiplex licence for another 7 year period until December 2035.

Annex A: List of organisations that provided a written response

Arqiva
Bauer
Global
Like Media Group
Nation Broadcasting
Panjab Radio
Sunrise Radio
United Christian Broadcasters (UCB)
UK DAB Networks
Wireless Radio