



# Digital Economy Act 2010

## 2010 CHAPTER 24

### *Independent radio services*

#### **30 Digital switchover**

- (1) In section 86(6) of the Broadcasting Act 1990 (varying licences under Part 3), for “section 110(1)(b)” substitute “ section 97B or 110(1)(b) ”.
- (2) After section 97 of that Act insert—

#### *“Digital switchover*

##### **97A Date for digital switchover**

- (1) The Secretary of State may give notice to OFCOM nominating a date for digital switchover for the post-commencement services specified or described in the notice.
- (2) When nominating a date, or considering whether to nominate a date, the Secretary of State must have regard to any report submitted by OFCOM or the BBC under section 67(1)(b) of the Broadcasting Act 1996 (review of digital radio broadcasting).
- (3) The Secretary of State—
  - (a) may nominate different dates for different services, and
  - (b) may give notice to OFCOM withdrawing a nomination under this section.
- (4) In this section and section 97B—

“date for digital switchover”, in relation to a post-commencement service, means a date after which it will cease to be appropriate for the service to continue to be provided in analogue form;

“post-commencement service” means a local service, national service or additional service that is provided under a licence that—

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- (a) was granted on or after the day on which this section comes into force, or
- (b) has been renewed under section 103B or 104AA.

### **97B Variation of licence period after date for digital switchover nominated**

- (1) This section applies if the Secretary of State has nominated a date for digital switchover for a post-commencement service (and has not withdrawn the nomination).
  - (2) If the period for which the licence to provide the post-commencement service is to continue in force ends after the date for digital switchover, OFCOM must by notice vary the licence so that the period ends on or before that date, subject to subsection (3).
  - (3) OFCOM may not reduce the period so that it ends less than 2 years after the day on which they issue the notice, unless the licence holder consents to such a reduction.
  - (4) If the period for which the licence to provide the post-commencement service is to continue in force ends on or before the date for digital switchover, OFCOM may not vary the licence so that the period ends after that date.”
- (3) In section 199(5) of that Act (publication of notices by OFCOM), after “55,” insert “97B, ”.

## **31 Renewal of national radio licences**

- (1) In section 103A of the Broadcasting Act 1990 (renewal of national licences), in subsection (1), after “renewed” insert “ under this section ”.
- (2) After that section insert—

### **“103B Further renewal of national licences**

- (1) A national licence may be renewed under this section on one occasion for a period of not more than 7 years beginning with the date of renewal (“the renewal period”) (subject to the following provisions of this section).
- (2) Subsections (2) to (9), (11) and (12) of section 103A apply in relation to the renewal of a licence under this section as they apply in relation to the renewal of a licence under section 103A, subject to subsection (3).
- (3) Those provisions apply in relation to the renewal of a licence under this section as if the following were omitted—
  - (a) subsection (4)(b),
  - (b) in subsection (4)(c), the words from “or OFCOM” to the end,
  - (c) subsection (6)(a),
  - (d) subsection (8)(a), and
  - (e) subsection (9)(c).
- (4) Where OFCOM renew a licence under this section they must include in the licence as renewed a condition requiring the licence holder to do all that the

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licence holder can to secure the broadcasting of a simulcast radio service in digital form throughout the renewal period.”

- (3) Section 103A(12) of the Broadcasting Act 1990 (as applied by section 103B of that Act) does not prevent the determination of a date falling less than one year after the making of the determination where—
- (a) the Office of Communications consider that the relevant date for the purposes of that section (as applied) is a date which is not more than 15 months after the day on which this section comes into force, and
  - (b) the determination is made as soon as practicable after that day.

### **32 Renewal and variation of local radio licences**

- (1) In section 104A of the Broadcasting Act 1990 (renewal of local licences)—
- (a) in subsection (1), after “renewed” insert “ under this section ”, and
  - (b) after that subsection insert—

“(1A) A local licence may be renewed under this section only if it is granted before the day on which section 104AA comes into force.”

- (2) After that section insert—

#### **“104AA Further renewal of local licences**

- (1) A local licence may be renewed under this section on one occasion for a period of not more than 7 years beginning with the date of renewal (subject to the following provisions of this section and section 104AB).
- (2) A local licence may be renewed under this section only if—
  - (a) it has been renewed under section 104A, or
  - (b) it is granted on or after the day on which this section comes into force.
- (3) Subsections (3) to (12), (13) and (14) of section 104A apply in relation to the renewal of a licence under this section as they apply in relation to the renewal of a licence under section 104A, subject to subsections (4) and (5).
- (4) Section 104A(3) (as applied) has effect as if the words “Subject to subsection (2)” were omitted.
- (5) In the case of an approved licence, if an applicant for renewal of the licence under this section makes a national nomination in accordance with section 104AB, section 104A (as applied) has effect as if—
  - (a) subsections (4) and (13)(b) were omitted,
  - (b) references to the nominated local digital sound programme service were references to the national digital sound programme service nominated under section 104AB, and
  - (c) references to the nominated local radio multiplex service were references to the national radio multiplex service nominated under section 104AB.
- (6) In this section and sections 104AB and 104AC—

“approved licence” means a local licence approved by OFCOM for the purposes of this section;

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“local digital sound programme service”, “local radio multiplex service”, “national digital sound programme service” and “national radio multiplex service” have the same meanings as in Part 2 of the Broadcasting Act 1996.

- (7) Before approving a licence for the purposes of this section, OFCOM must publish a document specifying—
- (a) the licence proposed to be approved, and
  - (b) a period in which representations may be made to OFCOM.

#### **104AB Renewal under section 104AA: nomination of national services**

- (1) For the purposes of section 104AA, a “national nomination” by an applicant for the renewal of an approved licence is the nomination of—
- (a) a national digital sound programme service provided or to be provided by the applicant, and
  - (b) a national radio multiplex service.
- (2) A national nomination must be made in the application for the renewal of the approved licence or before OFCOM consider the application.
- (3) The applicant may not nominate a national digital sound programme service unless OFCOM are satisfied that, if the application in question were granted, the programmes included in that service in each calendar month would include at least 80% of the programmes included in the service provided under the approved licence.
- (4) A national nomination must specify the other approved licences (if any) in relation to which, in reliance on the nomination, an application may be made under section 104AC.

#### **104AC Variation of conditions relating to digital services**

- (1) This section applies where—
- (a) a licence that is an approved licence has been renewed under section 104A and includes a local digital services condition,
  - (b) an application has been made under section 104AA for the renewal of another approved licence and the applicant has made a national nomination under section 104AB, and
  - (c) the nomination specifies the licence mentioned in paragraph (a) in accordance with section 104AB(4).
- (2) OFCOM may, if the requirements of subsections (3) and (4) are met, vary the licence mentioned in subsection (1)(a) by—
- (a) removing the local digital services condition, and
  - (b) adding a national digital services condition.
- (3) OFCOM must have received an application for the variation from the licence holder.
- (4) OFCOM must be satisfied that, if they varied the licence, the programmes included in the nominated national digital sound programme service in each

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calendar month would include at least 80% of the programmes included in the service provided under that licence.

(5) In this section—

“local digital services condition” means a condition requiring the licence holder to do all that the licence holder can to ensure that a local digital sound programme service is broadcast by means of a local radio multiplex service;

“national digital services condition” means a condition requiring the licence holder to do all that the licence holder can to ensure that the nominated national digital sound programme service is broadcast by means of the nominated national radio multiplex service until the day on which the licence (as renewed under section 104A) is to expire;

“nominated” means nominated in the nomination referred to in subsection (1)(b).”

(3) Section 104A(14) of the Broadcasting Act 1990 (as applied by section 104AA of that Act) does not prevent the determination of a date falling less than one year after the making of the determination where—

- (a) the Office of Communications consider that the relevant date for the purposes of that section (as applied) is a date which is not more than 15 months after the day on which this section comes into force, and
- (b) the determination is made as soon as practicable after that day.

(4) The requirement under section 104AA(7) of the Broadcasting Act 1990 may be satisfied by the publication of a document before this section comes into force.

### **33 Variation of licence period following renewal**

(1) In section 86(6) of the Broadcasting Act 1990 (variation of licence period etc), after “section 97B” (inserted by section 30) insert “, 105A”.

(2) Before section 106 (but after the heading preceding that section) insert—

#### **“105A Variation of licence period following renewal**

(1) This section applies if the Secretary of State—

- (a) has not nominated a date for digital switchover under section 97A for one or more relevant renewed services, or
- (b) has withdrawn the nomination of such a date and has not nominated another such date under that section.

(2) The Secretary of State may give notice to OFCOM fixing a date (the “termination date”) in relation to that service or such of those services as are specified or described in the notice.

(3) The Secretary of State may fix different dates for different services but may not fix a date falling before 31 December 2015.

(4) If the period for which a licence to provide a relevant renewed service is to continue in force ends after the termination date fixed for the service, OFCOM must by notice vary the licence so that the period ends on or before that date, subject to subsection (5).

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- (5) OFCOM may not reduce the period so that it ends on a day falling less than 2 years after the date on which they issue the notice, unless the licence holder consents to such a reduction.
  - (6) If the period for which a licence to provide a relevant renewed service is to continue in force ends on or before the termination date fixed for the service, OFCOM may not vary the licence so that the period ends after that date.
  - (7) “Relevant renewed service” means a national service provided under a licence that has been renewed under section 103B or a local service provided under a licence that has been renewed under section 104AA.”
- (3) In section 199(5) of that Act (publication of notices by OFCOM), after “103,” insert “105A,”.
- (4) If on 31 December 2012, in relation to a relevant renewed service (as defined in section 105A(7) of the Broadcasting Act 1990)—
- (a) section 105A of that Act applies, but
  - (b) the Secretary of State has not given a notice under that section,
- the Secretary of State must, before 31 December 2013, consider whether to give a notice under that section in relation to that service.

### **34 Content and character of local sound broadcasting services**

- (1) In section 106(1A) of the Broadcasting Act 1990 (conditions relating to departures from character of licensed service), after paragraph (d) insert “; or
- (e) that, in the case of a local licence—
    - (i) the departure would result from programmes included in the licensed service ceasing to be made at premises in the area or locality for which the service is provided, but
    - (ii) those programmes would continue to be made wholly or partly at premises within the approved area (as defined in section 314 of the Communications Act 2003 (local content and character of services)).”
- (2) Section 314 of the Communications Act 2003 (local content and character of local sound broadcasting services) is amended as follows.
- (3) In subsection (1), in paragraph (a), omit the words from “but” to “that case”.
- (4) After that subsection insert—
- “(1A) Paragraphs (a) and (b) of subsection (1) apply in the case of each local sound broadcasting service only if and to the extent (if any) that OFCOM consider it appropriate in that case.”
- (5) In subsection (7)—
- (a) before the definition of “local material” insert—
 

““approved area”, in relation to programmes included in a local sound broadcasting service, means an area approved by OFCOM for the purposes of this section that includes the area or locality for which the service is provided;”, and

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- (b) in the definition of “locally-made”, at the end insert “ or, if there is an approved area for the programmes, that area ”.
- (6) After subsection (8) insert—
  - “(9) Before approving an area for the purposes of this section, OFCOM must publish a document specifying—
    - (a) the area that they propose to approve, and
    - (b) a period in which representations may be made to OFCOM about the proposals.
  - (10) OFCOM may withdraw their approval of all or part of an area at any time if the holder of the licence to provide the local sound broadcasting service concerned consents.
  - (11) Where OFCOM approve an area or withdraw their approval of an area, they must publish, in such manner as they consider appropriate, a notice giving details of the area.”
- (7) The requirement under section 314(9) of the Communications Act 2003 may be satisfied by the publication of a document before this section comes into force.

### **35 Radio multiplex services: frequency and licensed area**

After section 54 of the Broadcasting Act 1996 insert—

#### **“54A Variation of radio multiplex licences: frequency or licensed area**

- (1) OFCOM may, if the requirements of subsections (3) to (5) are met, vary a national radio multiplex licence by extending the area in which the licensed service is required to be available.
- (2) OFCOM may, if the requirements of subsections (3) to (6) are met, vary a local radio multiplex licence by—
  - (a) varying the frequency on which the licensed service is required to be provided,
  - (b) reducing the area or locality in which the licensed service is required to be available, or
  - (c) extending that area or locality to include an adjoining area or locality.
- (3) OFCOM must have received an application for the variation from the licence holder.
- (4) The application must include a technical plan relating to the service proposed to be provided under the licence indicating, in particular—
  - (a) the area or locality which would be within the coverage area of the service,
  - (b) the timetable in accordance with which that coverage would be achieved, and
  - (c) the technical means by which it would be achieved.
- (5) Before deciding whether to grant the application, OFCOM must publish a notice specifying—
  - (a) the proposed variation of the licence, and

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(b) a period in which representations may be made to OFCOM about the proposal.

(6) In the case of a local radio multiplex licence, OFCOM may vary the licence in accordance with the application only if they are satisfied that doing so would not unacceptably narrow the range of programmes available by way of local digital sound programme services to persons living in the area or locality for which, before the proposed variation, the local radio multiplex service is required to be available.”

### 36 Renewal of radio multiplex licences

(1) After section 58 of the Broadcasting Act 1996 insert—

#### “58A Renewal of radio multiplex licences: supplementary

- (1) The Secretary of State may by regulations—
  - (a) amend section 58, and
  - (b) make further provision about the renewal of radio multiplex licences.
- (2) The regulations may, in particular, make provision about—
  - (a) the circumstances in which OFCOM may renew a radio multiplex licence,
  - (b) the period for which a licence may be renewed,
  - (c) the information that OFCOM may require an applicant for renewal of a licence to provide,
  - (d) the requirements that must be met by such an applicant,
  - (e) the grounds on which OFCOM may refuse an application for renewal of a licence,
  - (f) payments to be made in respect of a licence following its renewal, and
  - (g) further conditions to be included in a licence following its renewal.
- (3) The regulations may, in particular, amend or modify this Part of this Act.
- (4) A statutory instrument containing the regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (5) The power to make regulations under this section may not be exercised after 31 December 2015 (but this does not affect the continuation in force of any regulations made under this section before that date).”

(2) In section 72(1) of that Act (interpretation of Part 2), before the definition of “radio multiplex service” insert—

““radio multiplex licence” means a licence to provide a radio multiplex service;”.



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