

DIGITAL ECONOMY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Topic 6: Independent radio services

Background

130. The Act provides for the regulatory framework necessary to facilitate the delivery of a digital switchover of radio services to Digital Audio Broadcasting (DAB), referred to in the *Digital Britain: Final Report* as a “Digital Radio Upgrade”. In particular, the provisions give powers to the Secretary of State to nominate a date for digital switchover and ensure that OFCOM have sufficient powers to provide for an orderly changeover on that date, particularly powers to:
- Terminate relevant analogue licences by the nominated date for digital switchover without the licence holders’ consent, subject to a minimum notice period of 2 years;
 - Renew national and local analogue radio licences for up to a further 7 years so long as licence holders also provide content in a digital service via a multiplex¹;
 - Allow approved local licences to be renewed by the nomination of a national DAB service, providing that the analogue and digital services share at least 80% of their content; and
 - Allow for variation of the frequency or coverage area of a multiplex licence, with the aim of improving the coverage of DAB.
131. The Act reduces regulatory burdens by enabling local stations to share premises and administrative costs within an area approved by OFCOM.

Section 30: Digital switchover

132. [Section 30](#) allows the Secretary of State to give notice to OFCOM of a date by which digital switchover must occur for services specified in the notice. In making a decision to nominate a switchover date, the Secretary of State must take account of any reports by the BBC and OFCOM about the future of analogue broadcasting.
133. The date for digital switchover is the date after which it will no longer be appropriate for the service in question to be broadcast in analogue form.
134. The Secretary of State may nominate different switchover dates for different types of radio services and may withdraw a nomination of a switchover date.
135. After a switchover date has been set, OFCOM are required to vary the licence periods of all licences for the services specified by the Secretary of State so that they end on or before that date. However, OFCOM cannot shorten the duration of a licence so that it

¹ A multiplex consists of a number of digital services, such as radio stations, bundled together and transmitted digitally on a single frequency in a given transmission area.

would end less than 2 years from the date on which OFCOM give notice of the variation, unless the licence-holder consents.

136. OFCOM may not vary a licence period so that it ends after the switchover date.

Section 31: Renewal of national radio licences

137. **Section 31** allows the further renewal of national analogue licences for a period of up to seven years. All of these licences have already been granted a renewal of 12 years under the powers in section 103A of the Broadcasting Act 1990 (“the 1990 Act”).
138. The procedure to be adopted for licence renewals under the new section 103B of the 1990 Act is that set out in subsections (2) to (9), (11) and (12) of section 103A of that Act. However, within these subsections, the provisions which refer to a situation where a digital service is not yet on-air do not apply. This is because an applicant for a renewal under section 103B will already be providing a national digital simulcast service under the conditions of the previous renewal.
139. OFCOM must include a condition in renewed licences requiring licence holders to do all they can to provide a digital simulcast of their radio service throughout the renewal period.
140. An application for renewal must be made no later than three months before the relevant date, as defined in the existing section 103A(11) of the 1990 Act. Normally, OFCOM must determine the relevant date at least one year in advance. Section 31(3) allows OFCOM to set a relevant date of less than one year after the date of determination where they consider that the relevant date falls no more than 15 months after the day on which section 31 comes into force. However, OFCOM must determine the relevant date as soon as practicable following commencement of section 31.

Section 32: Renewal and variation of local radio licences

141. **Section 32** allows OFCOM to renew a local analogue licence for a period of up to seven years, provided it has already been renewed under section 104A of the 1990 Act or is granted on or after the date on which section 32 comes into force.
142. The procedure to be adopted for licence renewals under the new section 104AA is that set out in subsections (3) to (12), (13) and (14) of section 104A of the 1990 Act.
143. Under current renewal conditions, the applicant for renewal of a local licence must nominate a local digital sound programme service and a local DAB multiplex. Sections 104AA and 104AB make provision for holders of local licences to make a “national nomination”, that is, to nominate a national digital sound programme service and a national DAB multiplex. The power to make a national nomination is restricted to licences which are defined as an “approved licence”. It will be for OFCOM to determine, following consultation, whether a particular licence is approved for this purpose. The consultation requirement may be satisfied by OFCOM publishing a document before section 32 comes into force.
144. A national nomination must be made in the application for renewal or before OFCOM consider the application, and it may only be made where OFCOM are satisfied that the national digital sound programme service will include at least 80% of the content included in the service provided under the approved licence.
145. Section 104AB(4) requires that, if a licence holder is to make an application under section 104AC in relation to other approved licences, such licences must be specified in the national nomination.
146. The new section 104AC relates to a situation where an approved licence which has not yet been renewed under new section 104AA is specified in a national nomination made under new section 104AB(4) in connection with the renewal of another licence. It allows

OFCOM to vary the approved licence, at the request of the licence-holder, by replacing the “local digital services condition” with a “national digital services condition”.

147. A local digital services condition is a condition that OFCOM are currently required to include in renewed licences as a result of section 104A(12) of the 1990 Act, and by which a licence holder is required to do all the licence holder can to ensure that a local digital sound programme service is broadcast on a local radio multiplex service. The purpose of allowing such a condition to be replaced with a national digital services condition is so that holders of approved licences that have not yet been renewed under section 104AA but that wish to provide a digital service on a national multiplex, rather than on a local multiplex, are not, as a result, in breach of their local digital services condition.
148. Before OFCOM vary a licence under this provision, they must be satisfied that the national digital sound programme service will include at least 80% of the content included in the service provided under the licence that is the subject of an application for variation.
149. An application for renewal of a licence under section 104AA must be made no later than three months before the relevant date, as defined in the existing section 104A(13)(c) of the 1990 Act. Normally, OFCOM must determine the relevant date at least one year in advance. Section 32(3) allows OFCOM to set a relevant date of less than one year after the date of determination where they consider that the relevant date falls no more than 15 months after the day on which section 32 comes into force. However, OFCOM must determine the relevant date as soon as practicable following commencement of section 32.

Section 33: Variation of licence period following renewal

150. This section adds section 105A to the 1990 Act and allows the Secretary of State to reduce the duration of a licence renewed under section 103B or 104AA. This power only applies where the Secretary of State has not nominated a digital switchover date or has withdrawn a digital switchover date without nominating a further date.
151. The Secretary of State may give notice to OFCOM of a termination date, specifying the services affected. Different termination dates may be given for different services, but the termination date cannot be before 31 December 2015.
152. OFCOM are required to reduce the duration of a renewed licence so that it ends on or before the termination date set by the Secretary of State, but OFCOM cannot give less than two years’ notice of termination of the licence, unless the licence-holder consents.
153. OFCOM cannot vary the licence period under this section so that the licence expires after the termination date set by the Secretary of State.
154. The Secretary of State must consider, before 31 December 2013, whether to exercise the powers contained in section 105A.

Section 34: Content and character of local sound broadcasting services

155. This section allows OFCOM to amend the conditions of a local licence to allow local programming to be made outside of the licensed area and gives greater discretion to OFCOM to determine the appropriate level of locally-made content.
156. OFCOM may agree to a departure from the character of a service provided under a local licence if programmes will continue to be made within an area approved by them. OFCOM must consult prior to approving an area or withdrawing their approval. The consultation requirement can be satisfied by OFCOM publishing a document before section 34 comes into force.

Section 35: Radio multiplex services: frequency and licensed area

157. This section inserts section 54A into the Broadcasting Act 1996 (“the 1996 Act”). It allows OFCOM to vary a national radio multiplex licence by extending the area in which the licensed service is required to be available. It also allows OFCOM to vary the frequency, or extend or reduce the licensed area, of a local radio multiplex licence.
158. It is up to the holder of a licence to apply to OFCOM for approval of a variation. In so doing, the licence holder must submit a technical plan which indicates the proposed coverage area, the timetable and the technical means for implementing the change. OFCOM must consult on the proposal before granting the application. In the case of an application to vary a local radio multiplex licence, OFCOM may only grant approval if they consider that the variation will not unacceptably narrow the range of local DAB programmes in the area for which the local radio multiplex is provided.

Section 36: Renewal of radio multiplex licences

159. [Section 36](#) contains a power to amend Part 2 of the 1996 Act (and, in particular, section 58) by regulations for the purpose of making further provision about the renewal of radio multiplex licences. In particular, regulations made under this power may make provision about the circumstances in which OFCOM may renew a licence, the period of such renewal, the information that OFCOM may require from an applicant, the requirements that an applicant must meet, the grounds for refusal of an application, payments to be made and further conditions that may be included in a renewed licence.
160. The power, which is exercisable until 31 December 2015, is subject to the affirmative procedure, requiring approval by both Houses of Parliament.