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STATUTORY INSTRUMENTS

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**2010 No. 118**

**BROADCASTING**

**The Community Radio (Amendment) Order 2010**

*Made - - - - 21st January 2010*

*Coming into force in accordance with article 1*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 262 and 402(3) of the Communications Act 2003<sup>(1)</sup>.

The community radio services to which this Order applies are, or are to be, provided primarily for the good of members of the public or of a particular community, rather than for commercial reasons. The Secretary of State considers that the provision of those services confers, or would confer, significant benefits on the public or on the communities for which they are provided.

In accordance with section 262(5) of the Communications Act 2003 a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

**Citation and commencement**

1. This Order may be cited as the Community Radio (Amendment) Order 2010 and comes into force on the day after the day on which it is made.

**Amendment of the Community Radio Order 2004**

2. The Schedule to the Community Radio Order 2004<sup>(2)</sup> (which contains modifications of legislation in relation to community radio services) is amended as follows.

3.—(1) Paragraph 5(2) (which adds subsections (2) to (8) in section 105 of the Broadcasting Act 1990<sup>(3)</sup> as it has effect in relation to a community radio service) is amended as follows.

(2) The subsection (2) added to that section is omitted.

(3) In the subsection (3) added to that section, after “any other local service” there is inserted “, other than a community radio service”.

(4) In the subsection (4) added to that section—

(a) the words “Accordingly, and” are omitted;

(b) paragraph (a) is omitted;

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(1) [2003 c.21](#)

(2) [SI.2004/1944](#)

(3) [1990 c.42](#). Section 105 of that Act was amended by paragraph 48 of Part 1 of Schedule 15 to the Communications Act 2003

(c) in paragraph (b)—

- (i) after “any other local licence” there is inserted “for a service, other than a community radio service,”;
- (ii) after “includes” there is inserted “no”;
- (iii) for “50,000” there is substituted “150,000”;
- (iv) the words “, but no more than 150,000 such persons,” are omitted.

4. After paragraph 6 there is inserted—

*“Consultation about change of character of services*

**6A.** Section 106ZA(4) (consultation about change of character of local services) shall have effect as if, in subsection (1)—

- (a) for the words “local licence” there were substituted the words “community radio licence”;
- (b) for the words “paragraphs (b) to (d)” there were substituted the words “paragraphs (b), (d), (e) and (f).”(5)

5. After paragraph 10 there is inserted—

*“Extension of existing licences*

**10A.** Chapter 3 of Part 3 shall have effect as if section 253 were omitted and before section 254 there were inserted—

**“253A. Extension of community radio licences**

(1) A person who holds a community radio licence is entitled to apply to OFCOM, in accordance with the following provisions of this section, for one extension of the licence.

(2) The period for which a licence may be extended on such an application is a period ending not more than five years after the end of the period for which it was granted originally.

(3) An application under subsection (1) may only be made in the period which—

- (a) begins eighteen months before the date on which the licence would otherwise expire; and
- (b) ends six months before that date.

(4) An application under subsection (1)—

- (a) must be made in such manner,
- (b) must contain such information about the applicant, the applicant’s business and the service the applicant proposes to provide, and
- (c) must be accompanied by such fee (if any),

as OFCOM may determine.

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(4) Section 106ZA was inserted by section 313 of the Communications Act 2003

(5) Section 106(1A) of the Broadcasting Act 1990 (to which section 106ZA(1) refers) was modified by paragraph 6 of the Schedule to the Community Radio Order 2004. Modifications were made to paragraphs (b) and (d) of section 106(1A), while paragraph (c) was omitted and paragraphs (e) and (f) were added

(5) If, on an application for an extension under subsection (1), OFCOM are satisfied as to the matters mentioned in subsection (6), they shall modify the licence by extending the period for which the licence is to be in force by such period authorised by subsection (2) as they think fit.

(6) Those matters are—

- (a) the ability of the licence holder to maintain the service for the period of the extension; and
- (b) the likelihood of a contravention by the licence holder of a requirement imposed by a condition included in the licence by virtue of section 106 of the 1990 Act.””

21st January 2010

*Siôn Simon*  
Parliamentary Under Secretary of State  
Department for Culture, Media and Sport

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order, made under section 262 of the Communications Act 2003 (“the 2003 Act”) amends the Community Radio Order 2004 (“the 2004 Order”), which had made various modifications to the Broadcasting Act 1990 (“the 1990 Act”) and the 2003 Act in relation to community radio.

Article 3 makes the following modifications to the 1990 Act:

- (a) it omits section 105(2) of the 1990 Act that was previously included pursuant to paragraph 5(2) of the Schedule to the 2004 Order, thereby removing the restriction that a community radio licence may not be granted to an applicant who proposes to receive more than 50 per cent of the income the applicant needs to provide the proposed service from any one source.
- (b) it makes changes to section 105(3) and (4)(b) of the 1990 Act, as applied to community radio by the 2004 Order, to provide that the references to “any other local service” and “any other local licence” do not include references to any other community radio service or licence.
- (c) it removes two words from the beginning of section 105(4) which, by virtue of their context, are unnecessary.
- (d) it omits section 105(4)(a), thereby removing the prohibition on the Office of Communications (OFCOM) granting a licence to provide a community radio service where the licence would overlap with another local licence for a service with a potential audience of no more than 50,000 persons aged fifteen or over.
- (e) it makes changes to section 105(4)(b) by providing that the conditions prohibiting the inclusion of any remunerated advertisement and sponsorship that OFCOM are required to include in a community radio licence for a service which overlaps with another local service (other than a community radio service) apply where the potential audience does not exceed 150,000 persons aged fifteen or over.

Article 4 makes changes to s106ZA of the 1990 Act as it applies to community radio to add two further criteria to the list of matters as a result of which OFCOM must consult when deciding whether to consent to a departure from the character of a community radio service for the purposes of a condition imposed in a community radio licence under section 106(1A) of the 1990 Act. The two criteria already appear within section 106(1A) for the purpose of community radio as a result of paragraph 6 of the Schedule to the 2004 Order.

Article 5 modifies the 2003 Act in relation to community radio by substituting for section 253 a new section 253A, which gives OFCOM the power to extend community radio licences for one period of not more than five years.

An impact assessment of the effect that this instrument will have on the costs to business and the voluntary sector is available from the website of the Department for Culture, Media and Sport ([www.culture.gov.uk](http://www.culture.gov.uk)). It is also annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.