

Draft Order laid before Parliament under section 282(4) of, and paragraph 17(2) of Schedule 14 to, the Communications Act 2003, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2003 No. 0000

BROADCASTING

**The Media Ownership (Local Radio and
Appointed News Provider) Order 2003**

Made - - - -

Coming into force - -

The Secretary of State, in exercise of the powers conferred upon her by sections 282(1) and 402(3) of, and paragraphs 10 to 13 of Schedule 14 to, the Communications Act 2003⁽¹⁾, and having consulted the Office of Communications⁽²⁾, hereby makes the following Order, a draft of which has been laid before Parliament in accordance with section 282(4) of, and paragraph 17(2) of Schedule 14 to, that Act and approved by a resolution of each House of Parliament:

Part 1

General provisions

Citation and commencement

1.—(1) This Order may be cited as the Media Ownership (Local Radio and Appointed News Provider) Order 2003.

(2) This Order comes into force on 29th December 2003.

Interpretation of the Order

2.—(1) In this Order—

“the 1990 Act” means the Broadcasting Act 1990⁽³⁾;

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

(2) Such consultation is required by section 282(2) of, and paragraph 17(1) of Schedule 14 to, the 2003 Act in the case of any order under section 282 or Schedule 14, other than one that is confined to giving effect to recommendations made by OFCOM in a report of a review under section 391 of that Act.

(3) [1990 c. 42.](#)

“the 1996 Act” means the Broadcasting Act 1996⁽⁴⁾; and

“the 2003 Act” means the Communications Act 2003.

(2) Expressions used in this Order and in Part 3 of the 2003 Act have the same meanings in this Order as they have in that Part.

Connected persons

3.—(1) For the purposes of this Order—

(a) any person connected with a person who holds a licence shall be treated as if he also were a holder of that licence, and

(b) any person connected with a person who provides a local digital sound programme service shall be treated as if he also were providing that service,

and references to a person becoming the holder of a licence, or beginning to provide a service, shall be construed accordingly.

(2) References in this article to a person being connected with any other person shall be construed in accordance with Part 1 of Schedule 2 to the 1990 Act⁽⁵⁾.

(3) But a person shall not be treated as holding a local sound broadcasting licence or a local digital sound programme licence, or providing a local digital sound programme service, merely because he is the director of a body corporate which holds the licence or (as the case may be) provides the service.

Part 2

Requirements Applying to Local Sound Broadcasting Licences

Interpretation of Part 2

4.—(1) In this Part, “potential audience” means, in relation to a local sound broadcasting service or a regional Channel 3 service, the persons who have attained the age of 15 years and reside within the coverage area for that service.

(2) For the purposes of this Part, two local sound broadcasting licences overlap if (but only if) the potential audience of the service provided under either of those licences includes 50 per cent. or more of the potential audience of the service provided under the other licence.

(3) For the purposes of this Part, the coverage area for a service provided under a local sound broadcasting licence or a regional Channel 3 licence is the area in the United Kingdom within which that service is capable of being received at a level satisfying such technical standards as have been laid down by OFCOM for the purposes of this Part.

(4) Paragraphs 3 and 4 of Part 1 of Schedule 14 to the 2003 Act (which contain provisions concerning local and national newspapers and their market shares and provisions for the construction of references to running a newspaper) apply for the purposes of this Part of this Order as they apply for the purposes of that Part of that Schedule.

(4) 1996 c. 55.

(5) Part 1 of Schedule 2 to the 1990 Act was amended by paragraphs 1 to 3 of Part 1 of Schedule 2 to, and Part 1 of Schedule 11 to, the 1996 Act, and by section 357(1) of, paragraph 69(1) to (3) of Schedule 15 to, and Schedule 19 to, the 2003 Act.

Restriction on holding more than two overlapping licences

5.—(1) A person (“the relevant person”) who holds at least two local sound broadcasting licences may not hold a further such licence (“the further licence”) in any case where, if he were to do so, the conditions in paragraph (2) would be satisfied in relation to any licence held by him (“the licence in question”) at the time immediately after he became the holder of the further licence.

(2) The conditions are that—

- (a) the licence in question overlaps with any two other local sound broadcasting licences held by the relevant person which also overlap with each other;
- (b) one of the licences mentioned in sub-paragraph (a) is the further licence; and
- (c) the limit on concentration is contravened in the case of the licence in question.

(3) For the purposes of paragraph (2), the limit on concentration is contravened in the case of the licence in question if the first total represents more than 55 per cent. of the second total.

(4) The first total is the aggregate number of points attributable (according to the table in article 8) to—

- (a) the licence in question; and
- (b) any other local sound broadcasting licences held by the relevant person and of a description mentioned in the first column of the table in article 8.

(5) The second total is the aggregate number of points attributable to the licence in question and all other local sound broadcasting licences of a description mentioned in the first column of the table in article 8 (regardless of who holds them).

Cross-media ownership

6.—(1) A person (“the relevant person”) may not hold a local sound broadcasting licence (“the relevant licence”) in any case where, if he were to do so, then, at the time immediately after he became the holder of the relevant licence—

- (a) he would be a person of a description falling within paragraph (2); and
- (b) the conditions in paragraph (3) would be satisfied in relation to any licence that he holds (“the licence in question”).

(2) The descriptions of persons referred to in paragraph (1) are—

- (a) a person who runs a local newspaper which has a local market share of 50 per cent. or more in the coverage area of the service provided under the licence in question;
- (b) a person who runs local newspapers which together have a local market share of 50 per cent. or more in that coverage area;
- (c) a person who holds the licence to provide any regional Channel 3 service where at least 50 per cent. of the potential audience of the service provided under the licence in question reside within the coverage area for that regional Channel 3 service.

(3) The conditions are that—

- (a) the licence in question overlaps with any two other local sound broadcasting licences which also overlap with each other (regardless of who holds the other licences);
- (b) one of the licences mentioned in sub-paragraph (a) is the relevant licence; and
- (c) the limit on concentration is contravened in the case of the licence in question.

(4) For the purposes of paragraph (3), the limit on concentration is contravened in the case of the licence in question if the first total represents more than 45 per cent. of the second total.

(5) The first total is the aggregate number of points attributable (according to the table in article 8) to—

- (a) the licence in question; and
- (b) any other local sound broadcasting licences held by the relevant person and of a description mentioned in the first column of the table in article 8.

(6) The second total is the aggregate number of points attributable to the licence in question and all other local sound broadcasting licences of a description mentioned in the first column of the table in article 8 (regardless of who holds them).

(7) Where—

- (a) any person holds any local sound broadcasting licence which overlaps with any two other local sound broadcasting licences (regardless of who holds the other licences) which also overlap with each other,
- (b) that person becomes a person of a description mentioned in paragraph (2) while he is the holder of such a licence, and
- (c) at the time immediately after he becomes a person of that description, the condition in paragraph (3)(c) is satisfied in relation to any such licence that he holds,

that person may not then hold a local sound broadcasting licence in respect of which that condition is satisfied, taking, for the purposes of this paragraph, the references in paragraphs (2) to (6) to the licence in question to be references to the licence held by him mentioned in sub-paragraph (a) or (if there is more than one) each such licence in turn, and the reference in paragraph (5)(b) to the relevant person to be a reference to the person mentioned in sub-paragraph (a).

Application of articles 5 and 6 to changes in coverage area of local sound broadcasting services

7.—(1) Where—

- (a) a person (in this paragraph, “the relevant person”) holds any local sound broadcasting licence which overlaps with any two other local sound broadcasting licences held by him which also overlap with each other,
- (b) the coverage area for the service provided under any of the licences mentioned in sub-paragraph (a) changes at any time while the relevant person is the holder of that licence, and
- (c) at the time immediately after that change takes effect, the condition in article 5(2)(c) is satisfied in relation to any of those licences,

the relevant person may not then hold the licence or (as the case may be) licences in respect of which that condition is satisfied, taking, for the purposes of this paragraph, the references in article 5 to the licence in question to be references to each licence such as is mentioned in sub-paragraph (a) in turn, and the reference in article 5(4)(b) to the relevant person to be a reference to the relevant person referred to in this paragraph.

(2) Where—

- (a) a person of a description mentioned in article 6(2) (in this paragraph, “the relevant person”) holds any local sound broadcasting licence which overlaps with any two other local sound broadcasting licences (regardless of who holds the other licences) which also overlap with each other,
- (b) the coverage area for the service provided under any such licence changes at any time while the relevant person is its holder, and
- (c) at the time immediately after that change takes effect, the condition in article 6(3)(c) is satisfied in relation to any such licence,

the relevant person may not then hold the licence or (as the case may be) licences in respect of which that condition is satisfied, taking, for the purposes of this paragraph, the references in article 6 to the licence in question to be references to the licence held by him mentioned in sub-paragraph (a) or (if there is more than one) each such licence in turn, and the reference in article 6(5)(b) to the relevant person to be a reference to the relevant person referred to in this paragraph.

Table referred to in articles 5 and 6

8. The table is as follows, and in the table—

- (a) references to “the service in question” are references to the service provided under the licence that is the licence in question for the purposes of article 5 or 6 (as the case may require); and
- (b) the number of points attributable to each licence of a description mentioned in an entry in the first column of the table is the number of points shown in the corresponding entry in the second column.

<i>Description of licence</i>	<i>Number of points</i>
The licence in question	4 points
Each local sound broadcasting licence under which is provided a service whose potential audience includes 75 per cent. or more of the potential audience of the service in question	4 points
Each local sound broadcasting licence under which is provided a service whose potential audience includes at least 25 per cent. of, but less than 75 per cent. of, the potential audience of the service in question	2 points
Each local sound broadcasting licence under which is provided a service whose potential audience includes at least 5 per cent. of, but less than 25 per cent. of, the potential audience of the service in question	1 point

Prohibition on holding a local sound broadcasting licence, holding a Channel 3 licence, and running a local newspaper

9. No one person may at the same time—

- (a) hold a local sound broadcasting licence (“the licence in question”); and
- (b) hold the licence to provide any regional Channel 3 service the potential audience of which includes at least 50 per cent. of the potential audience of the service provided under the licence in question; and
- (c) run—
 - (i) a local newspaper which has a local market share of 50 per cent. or more in the coverage area for the service provided under the licence in question, or
 - (ii) local newspapers which together have a local market share of 50 per cent. or more in that coverage area.

Part 3

Requirements Applying to Local Digital Sound Programme Services

Interpretation of Part 3

10.—(1) In this Part, “potential audience” means, in relation to a local radio multiplex service, the persons who have attained the age of 15 years and reside within the protected area for that service.

(2) For the purposes of this Part, a person who holds a licence to provide local digital sound programme services provides such a service if, and only if—

- (a) the service is one provided by him and is included in a local radio multiplex service for which he holds a local radio multiplex licence; or
 - (b) under a contract between that person and a person who holds a licence to provide a local radio multiplex service, the person holding the licence to provide the radio multiplex service is required to include that local digital sound programme service in that multiplex service.
- (3) In this Part, “the protected area” means, in relation to a local radio multiplex service—
- (a) subject to sub-paragraph (b), the area or locality specified in a notice published under section 50(1) of the 1996 Act⁽⁶⁾ as that in which that multiplex service is to be available, or
 - (b) if different from that area or locality, the area or locality specified in the relevant licence as that in which that multiplex service is to be available,

and in this paragraph, “the relevant licence” means the local radio multiplex licence under which the multiplex service concerned is authorised to be provided.

Local digital sound programme services

11.—(1) A person (“the relevant person”) who provides local digital sound programme services under the authority of a local digital sound programme licence may not provide a further such service (“the further service”) in any case where, if he did so, there would be a contravention of paragraph (2) at the time immediately after he began providing the further service.

(2) This paragraph is contravened if—

- (a) the relevant person is already providing the threshold number, or more than that number, of local digital sound programme services; and
- (b) the number of points attributable (according to Table 1 below) to local digital sound programme services provided by the relevant person in the market area of the relevant multiplex service represents more than 55 per cent. of the total number of points attributable (according to Table 2) to all local digital sound programme services provided in that market area, whether by the relevant person or by any other person.

(3) For the purposes of paragraph (2), the threshold number of local digital sound programme services is four such services, comprising significant services or intermittent services (or any combination of significant services and intermittent services) that are included—

- (a) in the relevant multiplex service; or
- (b) in any other local radio multiplex service which overlaps with the relevant multiplex service, or in any two or more local radio multiplex services which so overlap, taking the number of significant or intermittent services in those multiplex services together; or

⁽⁶⁾ Section 50 of the 1996 Act is amended by paragraph 109 of Schedule 15 to the 2003 Act.

- (c) in the relevant multiplex service and in one or more other local radio multiplex services such as are mentioned in sub-paragraph (b), taking the number of significant or intermittent services in those multiplex services together;

and for the purposes of this paragraph, two local radio multiplex services overlap if (but only if) the potential audience of either of those services includes 50 per cent. or more of the potential audience of the other service.

(4) Subject to paragraph (5), in this article, “the relevant multiplex service” means the local radio multiplex service in which the further service is or is proposed to be included.

(5) In the case of a local radio multiplex service by means of different parts of which different selections of local digital sound programme services are made available for reception in different areas, any reference, in relation to a local digital sound programme service, to a local radio multiplex service is a reference to that part of that multiplex service in which that programme service is or is proposed to be included; and references to the market area, the potential audience and the protected area of such a multiplex service shall be construed accordingly.

(6) For the purposes of this article, a local digital sound programme service is provided in the market area of the relevant multiplex service if its provision is, or is to be, by means of its inclusion in that multiplex service or in any other local radio multiplex service the potential audience of which includes at least 5 per cent. of the potential audience of the relevant multiplex service.

(7) The Tables referred to in paragraph (2)(b) are as follows, and the number of points attributable to services provided by the relevant person shall be calculated according to Table 1, and the total number of points attributable to all local digital sound programme services provided in the market area of the relevant multiplex, whether by the relevant person or by any other person, shall be calculated according to Table 2, where the number of points attributable to each service of a description mentioned in an entry in the first column of a Table is the number of points shown in the corresponding entry in the second or third column (as the case may require) of that Table.

Table 1

Number of points attributable to services provided by the relevant person

<i>Description of service</i>	<i>Significant services</i>	<i>Intermittent services</i>
The further service	4	4
For each local digital sound programme service included in the relevant multiplex service	4	4
For each such service included in any other local radio multiplex service whose potential audience includes 75 per cent. or more of the potential audience of the relevant multiplex service	4	4
For each such service included in any other local radio multiplex service whose potential audience includes at least 25 per cent., but less than 75 per cent., of the potential	2	2

<i>Description of service</i>	<i>Significant services</i>	<i>Intermittent services</i>
audience of the relevant multiplex service		
For each such service included in any other local radio multiplex service whose potential audience includes at least 5 per cent., but less than 25 per cent., of the potential audience of the relevant multiplex service	1	1

Table 2

Number of points attributable to services whether provided by the relevant person or by any other person

<i>Description of service</i>	<i>Significant services</i>	<i>Intermittent services</i>
The further service	4	0
For each local digital sound programme service included in the relevant multiplex service	4	0
For each such service included in any other local radio multiplex service whose potential audience includes 75 per cent. or more of the potential audience of the relevant multiplex service	4	0
For each such service included in any other local radio multiplex service whose potential audience includes at least 25 per cent., but less than 75 per cent., of the potential audience of the relevant multiplex service	2	0
For each such service included in any other local radio multiplex service whose potential audience includes at least 5 per cent., but less than 25 per cent., of the potential audience of the relevant multiplex service	1	0

(8) In this article, “significant service” and “intermittent service” mean, respectively, a local digital sound programme service determined by OFCOM to be a significant service or an intermittent service, in accordance with article 12.

“Significant” and “intermittent” services

12.—(1) For the purposes of applying article 11, OFCOM shall determine, in the case of every local digital sound programme service falling to be considered for those purposes, whether that service is a “significant service”, or is an “intermittent service”, or is neither a significant service nor an intermittent service; and any such determination shall be made in accordance with the following provisions of this article.

(2) OFCOM—

- (a) shall determine a local digital sound programme service to be a significant service if it appears to them to be broadcast for at least 126 hours every week over a period of at least three months, or to be proposed to be so broadcast; and
- (b) may determine a local digital sound programme service to be a significant service if it appears to them to be broadcast for more than 100 hours every week over a period of at least three months, or to be proposed to be so broadcast.

(3) OFCOM—

- (a) shall determine a local digital sound programme service to be an intermittent service if it does not appear to them to be a significant service, but appears to them to be broadcast for more than 72 hours in any period of three months, or to be proposed to be so broadcast; and
- (b) may determine a service to be an intermittent service if it does not appear to them to be a significant service, but appears to them to be broadcast for more than 50 hours in any period of three months, or to be proposed to be so broadcast.

(4) As soon as reasonably practicable after making a determination under this article in the case of any local digital sound programme service, OFCOM must notify⁽⁷⁾ the person who holds the local digital sound programme licence under which that service is or is to be provided of their determination.

Part 4

Modifications of other legislation

Appointment as news provider

13.—(1) In section 281 of the 2003 Act (disqualification from appointment as news provider for regional Channel 3 services), after subsection (2) there shall be added—

“(3) The reference in subsection (2)(a) to a body which is a disqualified person under Part 2 of Schedule 2 to the 1990 Act in relation to a Channel 3 licence includes a reference to a person who is disqualified by virtue of a disqualification order under section 145 of the 1996 Act.”

(2) In section 145(7) of the 1996 Act⁽⁸⁾, the words “, 32(12)” are hereby repealed.

Restriction on holding of local radio multiplex licence: meaning of “potential audience”

14.—(1) In Part 2 of Schedule 14 to the 2003 Act, paragraph 8 (restriction on holding of local radio multiplex licences) shall be amended as follows.

(2) In sub-paragraph (1), for “coverage area”, in both places where it occurs, there shall be substituted “protected area”.

⁽⁷⁾ Section 394 of the 2003 Act (service of notifications and other documents) applies where provision made (in whatever terms) under that Act requires a notification to be given to any person.

⁽⁸⁾ Section 145(7) was amended by paragraph 140(3) of Schedule 15 to the 2003 Act.

(3) Sub-paragraph (2) is hereby repealed.

(4) After sub-paragraph (5) there shall be added—

“(6) In this paragraph, in relation to a local radio multiplex service—

“potential audience” means the persons who have attained the age of 15 years and reside within the protected area for that multiplex service; and

“the protected area” means—

(a) subject to paragraph (b), the area or locality specified in a notice published under section 50(1) of the 1996 Act as that in which that multiplex service is to be available; or

(b) if different from that area or locality, the area or locality specified in the relevant licence as that in which that multiplex service is to be available.

(7) In sub-paragraph (6), “the relevant licence” means the local radio multiplex licence under which the multiplex service concerned is authorised to be provided.”.

Date

Secretary of State for Culture, Media and Sport

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 282 of, and Schedule 14 to, the Communications Act 2003. Part 2 contains limits on the number of local sound broadcasting licences that a person may hold in the circumstances described in the Order. Part 3 contains limits on the number of local digital sound programme services that a person may provide. Part 4 modifies other legislation to give full effect to the restrictions in the Communications Act 2003 on who may provide news services for regional Channel 3 services, and to alter and clarify the restrictions in that Act on holding local radio multiplex licences.

Part 1 makes provision applicable to the rest of the Order. In particular, article 3 provides that a person connected with the actual holder of a licence, or with a person who actually provides a local digital sound programme service, is to be treated as if he, too, held that licence or provided that service. The question whether persons are “connected” for these purposes is to be answered by reference to the rules in Part 1 of Schedule 2 to the Broadcasting Act 1990 (c. 42). For example, two companies are “connected” if one controls the other (according to the definition of “control” in that Part of that Schedule) or if both are controlled by the same person.

Part 2 makes rules applying to local (analogue) sound broadcasting services. Article 5 provides for a restriction where a person holds at least two such local radio licences that overlap with each other, that is to say, where the potential audience of either service includes at least one half of the potential audience of the other: see article 4(2). The restriction applies when that person seeks to acquire a further licence to provide a service which also overlaps in that manner with his two other overlapping services. In those circumstances, points are attributed to each licence under which that or any other person provides a service in the area. The points are set out in the table in article 8. The person seeking to hold the further licence may not do so if, were he to do so, he would then hold more than 55 per cent. of the total points attributable to all services in the area, applying the points test to each of his overlapping licences in that area in turn. Generally, the test is applied according to the points situation that would prevail immediately after the person concerned acquired the licence, but where the area served by any person’s service changes while he is holding three overlapping licences, the test falls to be applied to his licences (but not those of any neighbouring licensee) again: see article 7.

Article 6 provides for a separate and stricter limit where two licences overlap with each other and the person seeking to acquire the further overlapping licence is a person who runs a local newspaper (or newspapers) having 50 per cent. or more of the market share in the area covered by the service provided under the licence, or who holds a regional Channel 3 licence covering that area. A points system similar to that explained above applies, including provision applying when the area served changes (see article 7), but in a case falling within article 6, the person seeking to acquire the further licence may not have more than 45 per cent. of the total points.

Article 9 prevents joint ownership in the same area of a local sound broadcasting licence, a regional Channel 3 licence and a local newspaper (or newspapers) having 50 per cent. or more of the market share in that area.

Part 3 makes rules determining the number of local digital sound programme services that may be provided under local digital sound programme licences. The rules are based on the number of such services that are provided in the market area of a particular local radio multiplex service, that is to say, in the area covered when considering the local radio multiplex service on which a person is seeking to provide a new service, taken with any other local radio multiplex service (or services) whose potential audience includes at least 5 per cent. of the potential audience of the first multiplex

service: see article 10(3). Points are attributed to all local digital sound programme services provided (by any person) in a market area, and the person may not provide the further service if, were he to do so, he would be providing services worth more than 55 per cent. of the total points attributable to all those services. The test is applied according to the points situation that would prevail immediately after the person concerned began to provide the service (if he did so). It does not apply to persons providing four services or fewer in a more narrowly-defined area (see article 11(3)). The points vary depending on (amongst other things) the hours for which a service is broadcast: see articles 11(8) and 12.

Part 4 modifies other legislation. Article 13(1) is made under section 282 of the 2003 Act and amends section 281 of that Act. Section 281 specifies the persons who cannot be the appointed news provider for regional Channel 3 services: essentially, any person who could not hold a Channel 3 licence is debarred from being the news provider. The effect of the amendment is to debar a person who is the subject of a disqualification order made by a court on conviction of an offence under section 144 of the Broadcasting Act 1996 (c. 55) (providing false information in certain circumstances in connection with the rules preventing political bodies etc. from holding broadcasting licences). This was the intended effect of the amendment to section 145 of that Act of 1996 made by paragraph 140(3) of Schedule 15 to the 2003 Act, but that amendment erroneously relies for its effect upon a provision repealed elsewhere in that Act (section 32(12) of the Broadcasting Act 1990). Article 13(2) repeals that cross-reference.

Article 14 replaces references to the “coverage area” of a local radio multiplex service with references to the “protected area” for such a service. It defines that expression in the same way as it is defined in Part 3 of this Order. That article also defines the expression “potential audience” for the purposes of paragraph 8 of Part 2 of Schedule 14 to the 2003 Act (restriction on holding local radio multiplex licences), under powers provided for in paragraph 10 of that Part of that Schedule. That expression is currently undefined in that Part. Since this Order defines “potential audience” differently as between Part 2 and Part 3 of the Order, the purpose of this amendment is to add clarity to paragraph 8 of Schedule 14 by specifying the definition that is to apply there. Article 14(2) repeals paragraph 8(2) of that Schedule, since that defines “coverage area”, an expression that will no longer be used in that paragraph.