

EXPLANATORY MEMORANDUM TO

THE SMALL-SCALE RADIO MULTIPLEX AND COMMUNITY DIGITAL RADIO ORDER 2019

2019 No. [0000]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Digital, Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument modifies the Broadcasting Act 1996 (“the 1996 Act”) to create a light-touch licensing regime for the new small-scale radio multiplex services (also known as small-scale DAB multiplexes) to enable a wider range of commercial and community digital radio stations to broadcast on the UK’s digital radio platform.
- 2.2 This instrument further modifies the 1996 Act to create a licensing regime for community digital sound programme services, a new type of digital sound programme service (i.e. digital radio station), to be broadcast on the new small-scale radio multiplex services.
- 2.3 This instrument also amends the Community Radio Order 2004 to modify the Communications Act 2003 to allow for a third five-year extension to a community radio licence.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland
- 3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 411 of the Communications Act 2003) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Minister for Digital and the Creative Industries [Margot James MP] has made the following statement regarding Human Rights:

“In my view the provisions of the Small-Scale Radio Multiplex and Community Digital Radio Order are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Broadcasting Acts 1990 and 1996 and the Communications Act 2003 make provision for the regulation of broadcasting in the UK, including the licensing of radio multiplexes and for the licensing of radio services.
- 6.2 Radio multiplex services are licensed by Ofcom under Part 2 of the 1996 Act. Holders of radio multiplex licences will also hold a licence under the Wireless Telegraph Act 2006 allowing radio services to be transmitted.
- 6.3 Digital radio is transmitted via a multiplexed signal, that is a single digital signal made up of multiple audio streams combined and transmitted by a radio multiplex service, enabling large amounts of information to be transmitted using comparatively little radio spectrum. Each digital radio multiplex service transmits on a specific, allocated radio spectrum frequency block. Radio multiplex licences are currently awarded according either for national (UK-wide) or local (generally county-sized) coverage.
- 6.4 Sections 46 to 59 of the 1996 Act set out the various procedures, provisions and conditions that are attached to the award of radio multiplex licences, depending on whether the multiplex is used for local or national transmission. Most notably, these include the licence application and award process, the conditions attaching to licences (including their duration), the process for licence variations and renewals, the requirement to reserve capacity for transmission of BBC services and enforcement powers for Ofcom in the event that conditions are breached.
- 6.5 The Broadcasting (Radio Multiplex Services) Act 2017 inserted section 258A into the Communications Act 2003 to give the Secretary of State the power to modify the 1996 Act, to create a new lighter touch licensing regime suitable for the new small-scale radio multiplex services.
- 6.6 Digital sound programming services (i.e. the underlying radio services carried via the multiplex service) are also licensed by Ofcom under Part 2 of the 1996 Act. Sections 60 to 62 of the 1996 Act set out the licence application and award process, the conditions attaching to licences, and enforcement powers for Ofcom in case of breach.
- 6.7 Section 262 of the Communications Act 2003 gives the Secretary of State the power to modify broadcasting legislation to create new types of community radio services. A specific regime for licensing analogue community radio services was created under the Community Radio Order 2004, which modified the Broadcasting Act 1990. This instrument uses this power to create a new regulatory framework for new community digital sound programme services, a new category of digital sound programme services through modification of the 1996 Act. In effect, the new community digital sound programme services are the digital version of the analogue community radio services and subject to broadly the same requirements.

7. Policy background

What is being done and why?

- 7.1 The Broadcasting (Radio Multiplex Services) Act 2017 amended the Communications Act 2003 to allow for the creation of a new type of radio multiplex service with a lighter touch licensing regime which would enable small community and commercial stations (both existing and new entrants) to broadcast to geographic areas smaller than covered by existing local radio multiplexes. This opens the way for over 300 existing

small radio stations to have a viable and cost-effective option to broadcast on the DAB digital radio platform.

- 7.2 In the UK, the technology adopted to deliver digital radio is Digital Audio Broadcasting (DAB/DAB+). At present DAB radio is broadcast via 3 national multiplex services (BBC operates one national multiplex service and commercial radio operates the other two) and 55 local (generally county sized though some – e.g. the one covering Northern Ireland are larger) radio multiplexes across the country. A radio multiplex service consists of a number of DAB radio stations bundled together to be transmitted digitally via a single signal to a particular geographic area.
- 7.3 Currently, there are more than 300 small community and commercial radio services broadcasting on FM/AM analogue radio frequencies that do not have the opportunity to broadcast on digital radio because either there is not sufficient capacity available on local radio multiplexes, or the costs of carriage on these networks are too high, or the local radio multiplex coverage area is too large compared to their own ‘core’ FM/AM transmission area.
- 7.4 Many of these small stations recognise the risk that they will lose prominence with their listeners as digital radio, increasingly, becomes the default mode (note - according to the industry’s RAJAR statistics for Q1 2019 digital radio listening has 56.4% share of all radio listening). There is very wide support from smaller stations to have an effective and practical option to broadcast on digital to the localities they serve if a cost effective and practical solution was available.
- 7.5 Small-scale DAB is a new way of transmitting digital radio. It uses advances in software technology to provide a more flexible and cheaper approach to the transmission of radio services to a small geographic area. The concept was first tested for broadcast in Brighton by an Ofcom engineer in 2013 and subsequently DCMS funded a two-year (2014-16) programme, run by Ofcom, to test the feasibility of small-scale DAB technology. The work included technical trials of small-scale DAB multiplexes in 10 towns and cities and has involved around 160 small commercial and community stations broadcasting on terrestrial DAB for the first time. The trials have been extended to 2020 (with no extra funding) and have demonstrated that small-scale DAB is able to provide a robust and reliable means for small stations currently operating on FM/AM frequencies to broadcast on digital, as well as to entrants wishing to launch new services on a digital terrestrial platform.
- 7.6 The trial arrangements were set up under temporary licensing arrangements (under the Wireless Telegraphy Act 2006) and DCMS and Ofcom concluded these arrangements, which focus on spectrum use, are not a suitable basis for the long-term licensing of small-scale DAB multiplexes. The existing legislative framework for licensing radio multiplexes (in Part 2 of the 1996 Act) is not suitable to license small-scale DAB multiplexes because it is too restrictive and places certain requirements on multiplex operators that would be disproportionate for low cost, small-scale radio multiplexes.
- 7.7 A key restriction is that Ofcom had no discretion to adapt the requirements in the legislation to take account of the size and audience share for radio services targeted at smaller localities – i.e. at sub-county level. Similarly, there was no power in the legislation for the Secretary of State to adapt or change the requirements to reflect changing circumstances. The legislation also did not include requirements for Ofcom to be able to reserve capacity for community radio stations, enforce restrictions on

ownership and regulate the transparency of charging costs which may be burdensome for smaller commercial and community radio stations.

- 7.8 To address this DCMS supported the passage of a Private Members' Bill, introduced by Kevin Foster MP, through Parliament in early 2017. The Broadcasting (Radio Multiplex Services) Act 2017 amends the Communications Act 2003 to give the Secretary of State a power to modify, through secondary legislation, the 1996 Act regime for local and national radio multiplex services to create a lighter touch licensing regime that is more appropriate for small-scale radio multiplex services.
- 7.9 Article 3 of this instrument provides that a small-scale radio multiplex service is a radio multiplex service that serves a particular area or locality in the UK and describes the size restrictions depending on whether or not the small-scale radio multiplex service overlaps with existing local radio multiplex services.
- 7.10 Within this definition, Ofcom will under section 50(2) of the 1996 Act (as modified by this instrument) specify the area or locality for each small-scale radio multiplex service. The policy intention is that the maximum overlap between a small-scale radio multiplex area and a local radio multiplex should not exceed 40% by population of the overlapping local radio multiplex. However, having considered the consultation responses and considered this issue further with Ofcom, we have decided to give Ofcom the discretion be able to extend areas above this upper limit. This ensures that Ofcom has sufficient flexibility to plan the new network and adapt the size of the new multiplex areas to local demand. For example, in a small number of cases where a local radio multiplex service encompasses a large town and a much more sparsely populated area, it may be appropriate for a small-scale radio multiplex service covering the natural community of the town to exceed 40% of the population of the wider area.
- 7.11 The instrument also defines a community digital sound programme as a service broadcast on either a small-scale or local radio multiplex service which has broadly the same characteristics as a community radio service (as set out in the Broadcasting Act 1990 (as modified by the Community Radio Order 2004)): namely that it is provided primarily for the public or communities in order to deliver social gain.
- 7.12 The Schedule to this instrument sets out a number of modifications of Part 2 of the 1996 Act in relation to small-scale radio multiplex services and community digital sound programme services. The references to sections of the 1996 Act in the paragraphs below are references to those sections as modified by this instrument.

Restrictions on holding small-scale radio multiplex licences

- 7.13 A key policy intention is to allow both commercial and not for profit entities to hold a small-scale radio multiplex licence. This approach was strongly supported in the consultation. The technical trials carried out by Ofcom tested different models and showed that there is benefit in having a commercial input into the establishment and running of small-scale radio networks. The risk if small-scale radio multiplexes were limited only to not-for profit organisations is that the widespread interest in establishing these networks may not materialise.
- 7.14 Section 44A sets out which bodies are disqualified from holding a small-scale radio multiplex licence. There are two policy intentions for these disqualifications. The first is to avoid a potential concentration of ownership in localities where there is an interest in holding a small-scale radio multiplex licence from existing local radio

multiplex operators. The second is to promote diversity of ownership of small-scale radio multiplex licences and to limit the level involvement of organisations involved in national radio broadcasting. The details are as follows:

- 7.14.1 A company cannot hold more than 20 per cent of the total number of licences.
- 7.14.2 Similarly, a company cannot hold a licence if one of its shareholders is a company holding more than 20 per cent of the total number of licences. The policy intention is to ensure plurality amongst licensees and to deal with concerns about the risk of regional or quasi-national structures developing.
- 7.14.3 Holders of national radio multiplex licences and national sound broadcasting licences cannot hold a licence. A company cannot hold a small-scale radio multiplex licence if one of its shareholders is the holder of one of those national licences and owns more than 30% of the shares in the company. A company cannot hold a licence if one of its shareholders is the holder of one of those national licences and is a shareholder in one or more companies holding more than 6 small-scale radio multiplex licences. The policy intention of these provisions is to restrict the influence of the large radio groups involved in the national radio infrastructure.
- 7.14.4 A holder of a local radio multiplex licence is free to hold a small-scale radio multiplex licence except where the coverage area of that local radio multiplex overlaps with the coverage area of the small-scale radio multiplex service. A company cannot hold a licence if one of its shareholders is the holder of a local radio multiplex licence, the shareholder owns more than 30 per cent of its shares and the coverage area of the local radio multiplex overlaps with the coverage area of the small-scale radio multiplex service. The policy intention is to ensure competition and choice.
- 7.14.5 A holder of a small-scale radio multiplex licence cannot hold another licence if the coverage areas of the two licences overlap to a significant extent within the same local radio multiplex. The policy intention here is to prevent what in effect would be the creation of a *de facto* single multiplex (which could directly compete with the local radio multiplex) through the ownership of multiple adjacent small-scale radio multiplexes.
- 7.14.6 Furthermore, a company that is connected with one of the national, local or small-scale radio licence holders mentioned above is treated as if it were the holder of the licence. A company is to be treated as connected with another company if it controls that company. For example, if Company A owns 60% of the shares of the holder of a national radio multiplex licence (and therefore controls the holder of the licence) then Company A is treated in the same way as the holder of the licence and cannot hold a small-scale radio multiplex licence.

Reservations of capacity for Community Digital Radio Stations

- 7.15 Section 49A requires Ofcom to reserve capacity on small-scale radio multiplexes for community digital radio stations. Ofcom must set a minimum level to allow at least three community digital radio stations on each small-scale radio multiplex, but may set a higher level of reservation having regard to current and anticipated demand from such stations. The reserved capacity will be a ‘firm’ reservation that must be maintained for use by community digital radio stations (i.e. C-DSP licence holders) and must not be used for other purposes, even on an interim basis. The policy intention for taking this approach is that it provides the best way to ensure that community digital radio stations can gain access to a digital platform. A ‘firm’

reservation should act as a strong incentive for small-scale radio multiplex operators to set affordable fees for community stations in order to utilise the reserved capacity.

Variation of reservation limits

- 7.16 To address the risk that some reserved capacity could go unused section 49A allows Ofcom - after a period of at least 3 years after a licence is granted - to vary the level of reserved capacity for community digital radio stations, following a request by the small-scale radio multiplex operator for a licence variation, but keeping sufficient capacity for at least three services. Before granting a variation, Ofcom must publish a notice specifying the proposed variation and take into account any representations about the proposal. The policy intention is to allow small-scale radio multiplex operators the ability to utilise unused capacity where there is genuinely no demand from local community stations.

Other implications

- 7.17 The reserved capacity for community radio on small-scale radio multiplexes will only be available to holders of C-DSP licences and not to DSP licence holders. Existing community radio services holding analogue licences that want to use the reservation and broadcast on digital will need to obtain a C-DSP licence. Holding a C-DSP will not in itself guarantee carriage, as there may be more C-DSP holders in a locality than reservations.
- 7.18 Each C-DSP service may only be broadcast on a single small-scale radio multiplex and therefore will only be eligible to use reserved capacity on that small-scale radio multiplex. Alternatively a C-DSP service could also be broadcast on a single local radio multiplex. A provider of a C-DSP service would have the option of getting a DSP licence to broadcast the content of the C-DSP service outside of their 'core' area on unreserved capacity.
- 7.19 Currently BBC local stations and BBC Nations services (such as BBC Radio Scotland and BBC Radio Wales) are carried on local radio multiplexes and there is a requirement for operators of these networks to reserve capacity for the BBC (as per section 49 of the 1996 Act). The BBC have indicated they are unlikely to need to take carriage for their services on a small-scale radio multiplex. Nonetheless it will be possible for the BBC to take carriage on a small-scale radio multiplex should they wish to do so. However, there is no requirement for Ofcom to place any condition on new small-scale radio multiplex licences to reserve capacity for any BBC local services.

Small-scale radio multiplex licences

- 7.20 Section 50 deals with the process by which Ofcom will advertise and invite applications for a small-scale radio multiplex licence in available areas. Ofcom will publish a notice specifying the area or locality in the UK available to provide a small-scale radio multiplex service; the frequency on which the small-scale radio multiplex service is intended to be provided; the digital capacity on the frequency to be reserved for broadcasting community digital sound programme services; fee payable and closing date.
- 7.21 In specifying the areas or localities of small-scale radio multiplex services, Ofcom must consider the level of demand from community and commercial stations to broadcast and the support for such services in the area; whether the area is suitable, in

technical terms such as frequencies, for community and commercial radio services; and the level of overlap of coverage with an existing local radio multiplex. In particular, the level of overlap should not be more than 40% of the population of the coverage area of the local radio multiplex. However, Ofcom will have the ability to exceed this percentage in certain cases. This may be relevant, for example, where there is a local radio multiplex centred on a single large town or city surrounded by a much more sparsely populated area. In such a case, applying the 40% limit inflexibly may make it difficult to serve the community of the town with a single small-scale radio multiplex service.

- 7.22 Ofcom is already in the process of developing a notional spectrum plan indicating local areas that would be most suitable for small-scale radio multiplexes, and the spectrum available in each such area. To inform this technical planning work and the subsequent licensing process, Ofcom has already (in 2018) sought expressions of interest (EOI) from parties wanting to operate small-scale DAB multiplexes and/or who are interested in providing radio services on these future multiplexes. Overall across the UK Ofcom has received more than 700 EOIs Ofcom's planning for licensed small-scale radio multiplex areas has been based on the Government's policy intention, as set out in the DCMS response to the small-scale DAB licensing consultation, which is to limit the coverage area of each small-scale radio multiplex to a maximum of 40% of the population served by the existing local radio multiplex in each area.

Award of small-scale radio multiplex licences

- 7.23 Section 51 covers matters that Ofcom must have regard to when awarding small-scale radio multiplex licences. Ofcom should assess the extent to which an applicant's technical plan covers the specified area or locality as advertised by Ofcom. This will be an important consideration where there is more than one application for a licence. In these instances, Ofcom will give greater weight to an application substantially serving the advertised area over one proposing less coverage.
- 7.24 Ofcom must consider the ability of an applicant to establish the proposed multiplex service. Individual radio services will need to rely on small-scale multiplexes as their means of distributing programme content and the policy intention is that Ofcom should be licensing only viable multiplex services. In assessing an applicant's ability to establish its proposed small-scale radio multiplex service, the intention is to allow Ofcom to focus more heavily on their technical know-how, resources and experience than on financial aspects, although Ofcom will want to be sure the applicant has access to sufficient capital to set up a small-scale radio multiplex service. Ofcom would also be able to assess the extent to which the applicant's proposed technical plan is realistic and deliverable.
- 7.25 Ofcom must also consider the extent of involvement of community radio in a particular application. The policy intention is to encourage the participation of community digital radio services either directly as part of a consortium bidding for a small-scale radio multiplex licence or from an applicant who can demonstrate support from community stations wanting to take carriage on the proposed multiplex service.
- 7.26 Ofcom must consider applicants in respect of fair and effective competition principles. When awarding small-scale radio multiplex licences Ofcom will be able to assess applicants against this criterion by requiring them to provide details of the correspondence they have had with prospective and confirmed radio service

providers, and, where necessary, to explain the basis on which they have allocated capacity on the multiplex.

- 7.27 Section 51 also allows Ofcom to revoke the award of a small-scale radio multiplex licence when Ofcom have reasonable grounds for believing the successful applicant will not provide the service within 18 months of the date of the award. The policy intention is to ensure the prompt roll out of small-scale radio multiplex services and to prevent award winners from sitting on scarce spectrum without the means or intention of launching the multiplex service promptly.

Failure to begin providing licensed service and financial penalties on revocation of licence

- 7.28 Section 53 deals with a situation where a small-scale radio multiplex licence has been granted but before it comes into force and allows Ofcom to revoke the licence in certain circumstances which includes where Ofcom have reasonable grounds to believe the multiplex service will not be provided within 18 months of the award date. Again, this is to prevent award winners from sitting on scarce spectrum, but deals with the case where the licence has been granted (whereas section 51 relates to where an award has been made but no licence yet granted).
- 7.29 Where a licence has been revoked, Ofcom have the discretion to levy a specified financial penalty on the small-scale radio multiplex licence holder of up to £100,000, a lower maximum figure than could be applied to a similar breach of a local radio multiplex licence

Conditions attached to national or local radio or small-scale radio multiplex licence

- 7.30 Section 54 allows Ofcom to include certain conditions in a small-scale radio multiplex licence which they consider are appropriate for securing the service is established in accordance with the technical plan submitted to Ofcom. In particular, licences must include a condition that operators have to transmit digital signals that meet reasonable standards of technical quality and reliability in the coverage area. As small-scale radio multiplexes are not required to carry BBC nations or BBC local radio services, there is no need for the licence to hold operators to the same level of technical quality and reliability as local radio multiplexes - for example by building in additional redundancy or resilience. Operators will want to meet the requirements of the stations that they contract with to carry services.
- 7.31 Licences must also include conditions requiring the holder of the licence to publish information about carriage rates being charged. The policy intention here is to promote a price transparency by small-scale radio multiplex operators. The consultation responses indicated this would be an effective mechanism in addressing the risk of small-scale radio multiplex operators setting unreasonably high carriage fees.
- 7.32 It is important for Ofcom to know what services are carried on a small-scale radio multiplex at any given time for compliance purposes (for example providing clarity as to whether reserved capacity for community radio services is filled and by whom). Therefore licences must also include a condition requiring holders of the licences to provide Ofcom with information on the digital radio services broadcasting on the licence at any given time.

Variation of radio multiplex: frequency or licensed area

- 7.33 Section 54A deals with Ofcom's power to vary aspects of radio multiplex licences. With respect to small-scale radio multiplexes Ofcom may only vary a licence if they are satisfied the numbers of community and commercial stations available to listeners in the area or locality where the multiplex service is required to be available would not be unacceptably reduced.
- 7.34 Section 58 provides that the length of a small-scale radio multiplex licences is **seven years** with an option for the holder to renew for a further **five years** and no further right of renewal. Having considered the consultation it is clear that this will provide small-scale radio multiplex operators and the radio services providers opting to take carriage with a greater level of stability and certainty to support both long term planning and underpin confidence to invest in the new small-scale digital radio networks.
- 7.35 Ofcom may only refuse a renewal if Ofcom at the point of renewal: (a) consider that the applicant appears to have failed to comply with any of the conditions in the small-scale radio multiplex licence; or (b) are not satisfied about the licensee's ability to meet licence requirements for the period covered by the renewal. Ofcom will be able to amend the level of the reservation for community radio services to reflect any changes in demand for reserved capacity since the original award of the licence, subject to the minimum level remaining sufficient for at least three such services.

Community digital sound programme (C-DSP) services

- 7.36 Stations broadcast on a small-scale radio multiplex must be provided by the holders of local digital sound programme licence or a new community digital sound programme licence (C-DSP) or the BBC.
- 7.37 The key purpose of the new C-DSP class of service is to support the full participation of the community radio sector on small-scale radio multiplexes and to encourage new entrants to establish DAB only community digital radio services on these networks. It is also to ensure that the public policy benefits of community radio continue to be delivered on the digital platform. C-DSP licence holders will need to commit to broadly the same social value requirements that apply to existing analogue community stations. They will similarly need to be constituted as not-for profit vehicles for social gain. All community stations wanting to access reserved capacity on a small-scale radio multiplex will need a C-DSP licence.
- 7.38 The policy intention is that all existing community stations licensed under the Broadcasting Act 1990 (as modified by the Community Radio Order 2004) may apply for a C-DSP licence rather than DSP licence if they wish to broadcast on the DAB platform. However, it is recognised that some holders of analogue community radio licences may choose to be licensed as a DSP rather than a C-DSP on small-scale radio multiplexes (recognising that in doing so they would not have access to reserved capacity or qualify for grants from the Community Radio Fund, but also that they would not be required to deliver social gain etc.). Currently a small number of community radio stations broadcasting on FM/AM also simulcast as a DSP licence holder on a local radio multiplex.
- 7.39 C-DSP licence holders will also be able to take carriage on a local radio multiplex if they wish to broadcast to a larger coverage area (but will not be able to access any reserved capacity as no such reservations exist on the local radio multiplex layer).

Award of C-DSP licences

- 7.40 Section 60 deals with the award of C-DSP licences. Awarding analogue community radio licences is based on competitive process between bidders for scarce (mainly FM) spectrum. This will no longer apply in a digital environment and the licensing regime for awarding C-DSPs can be lighter touch, and will not involve any competitive element (i.e. Ofcom will not be limited by spectrum constraints to awarding a licence to just one of several applicants in a particular locality). Ofcom must nevertheless have regard to three criteria when deciding whether to grant a C-DSP licence compared to seven for analogue community radio licences (as contained in section 105 of the 1990 Act, as modified by the Community Radio Order 2004). The three criteria are: i) the extent of social gain; ii) participation in the operation and management of the service and (iii) accountability to the community.
- 7.41 In exercising the power to grant C-DSP licences Ofcom would no longer be selecting the ‘best’ of several applicants, rather they will be ensuring that applicants are able to demonstrate that they meet the criteria that form the essence of community radio. Since a C-DSP licence holder will need to deliver the community benefits required by the legislation and be able to access reserved capacity on small-scale radio multiplexes, Ofcom also need to be able to ensure that applications which do not meet a minimum standard against the criteria can be rejected (noting that such services may still apply for standard digital sound programme licences and seek carriage on unreserved capacity).

Duration and conditions of community digital sound programme licences (C-DSP)

- 7.42 Section 61 deals with the duration and conditions of C-DSP licences. Like existing DSP licences, a new C-DSP licence will continue to be in force until the licence is surrendered by its holder or it is revoked by Ofcom. The main difference between an analogue community radio licence and a C-DSP licence is that C-DSP licences will be perpetual (not for 4 periods of five years as with analogue licences) and they will not have a requirement to broadcast though they would be required to pay Ofcom’s licence fees and to submit annual returns to Ofcom (n.b. the requirement to broadcast applies to analogue services as they benefit from specific scarce reserved spectrum, whereas a digital licence merely provides an opportunity to broadcast if the licensee can negotiate carriage via a multiplex service).
- 7.43 A C-DSP service can only be broadcast on a single small-scale radio multiplex. The policy intention is to ensure that services deliver social gain for the target community specifically within the chosen multiplex area.

Advertising restrictions for community digital sound programme licences (C-DSP)

- 7.44 Section 61A deals with the rules regarding the sources of funding for community digital sound programme services. The policy intention is to create a comparable regime for community radio stations on a digital platform compared to the regime set up for analogue community stations under the Community Radio Order 2004.
- 7.45 A C-DSP service may, subject to two exceptions, obtain up to £15,000 per financial year from the sale of on-air advertising and sponsorship (the ‘fixed revenue allowance’) and up to 50% of its relevant income over and above the fixed revenue allowance from the sale of on-air advertising and sponsorship.
- 7.46 Where the C-DSP is a simulcast of an analogue community radio service and the analogue service is limited to an advertising and sponsorship income of £15,000, the

C-DSP is not allowed to receive any further advertising and sponsorship income. That is, the income from both services cannot exceed £15,000.

- 7.47 Where the C-DSP is a simulcast of an analogue community radio service and the analogue service is allowed £15,000 and 50 per cent of relevant income from advertising and sponsorship, the C-DSP is also allowed 50 per cent of relevant income from advertising and sponsorship (but not the £15,000 allowance).
- 7.48 The policy intention is to prevent licensees benefitting from the £15,000 fixed revenue allowance twice, from a community radio service (analogue) and a C-DSP (digital), when they are simulcast services (i.e. essentially the same service).

Requirements as to the characteristics of community digital sound programme services

- 7.49 The policy intention is that C-DSP services should have broadly similar characteristics as analogue community radio services. Section 61B requires licences to include conditions to ensure that the characteristics of the service are maintained while the service is broadcast (see paragraph 7.30 above). Ofcom can only consent to a departure from these characteristics having regard to the three criteria mentioned in paragraph 7.40 above.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union/trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 There is no current plan to consolidate the legislation modified by this instrument.

10. Consultation outcome

- 10.1 In 2018 the Government consulted radio industry stakeholders on detailed proposals for licensing new small-scale approaches to digital radio broadcasting using powers under section 258A of the Communications Act 2003.
- 10.2 The consultation sought views on proposals for the licensing scheme which looked to balance the interests of community radio and small commercial stations whilst ensuring only minimum burdens are placed on organisations/consortia that want to operate a small-scale radio multiplex service. A total of 87 responses were received, including submissions from broadcasters, radio multiplex operators, the Community Media Association (the body representing community radio) and Radiocentre, the trade body for commercial radio.
- 10.3 Overall there was strong support for reserving capacity on new small-scale radio multiplexes for community radio stations; creating a new C-DSP category of digital sound programme licence for community stations wishing to broadcast on DAB; allowing both commercial and not for profit entities to hold a small-scale radio multiplex licence, but with the safeguard of including restrictions to limit the number of licences that can be held by a single operator to avoid a risk of concentration; for a longer length of term for a small-scale radio multiplex licence.
- 10.4 The Government published a response in October 2018 and it is available at <https://www.gov.uk/government/consultations/small-scale-dab-licensing-consultation>.

Consultation responses have been used to inform the development of this instrument. Ofcom, as the broadcasting regulator, were consulted in drafting this instrument.

11. Guidance

- 11.1 Ofcom will consult on its proposed licensing and regulatory processes. Ofcom will issue detailed guidance for broadcasters and small-scale radio multiplex operators following their usual process once this instrument has been made.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is that commercial and community radio broadcasters will need to familiarise themselves with a new licensing system for small-scale radio multiplex services and community digital sound programme services and guidance as provided by Ofcom.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because it does not meet the qualifying threshold. The Department's self-certification assessment has concluded the equivalent annual costs to businesses would be c. £0.311m.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), Ofcom will adapt the existing licensing system (application procedures and documentation) used for radio multiplexes, and commercial and community radio stations for new small-scale radio multiplex and C-DSP licences.

14. Monitoring & review

- 14.1 The Order does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Margot James MP, Minister for Digital and the Creative Industries has made the following statement:
- “I do not consider it appropriate to include a review clause in the legislation. The Department's regulatory triage assessment concludes that the impact on businesses applying for or being awarded a licence to operate a small-scale radio multiplex service and on not-for-profit organisations being awarded community digital sound programme licences is less than £5m per year.”
- 14.2 The Department for Digital, Culture, Media and Sport will monitor and review this legislation from time to time using information shared with DCMS by Ofcom as well as regular engagement with stakeholder groups.

15. Contact

- 15.1 Ian O'Neill, Head of Radio at the Department for Digital, Culture, Media and Sport Telephone: 0207 211 6981 or 07706 381491 email: ian.oneill@culture.gov.uk can answer any queries regarding the instrument.
- 15.2 Ben Dean, Deputy Director of Media Policy, at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Margot James MP, at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.