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STATUTORY INSTRUMENTS

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**2003 No. 3299**

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

**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<sup>(1)</sup> 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

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

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
- (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	4	4

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*Status:* This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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<i>Description of service</i>	<i>Significant services</i>	<i>Intermittent services</i>
75 per cent. or more of the potential audience of the relevant multiplex service		
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	2
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	1	0

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<i>Description of service</i>	<i>Significant services</i>	<i>Intermittent services</i>
potential audience includes at least 5 per cent., but less than 25 per cent., of the potential audience of the relevant multiplex service		

(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<sup>(2)</sup> the person who holds the local digital sound programme licence under which that service is or is to be provided of their determination.

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(2) 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.