SCHEDULE

MODIFICATION OF LEGISLATION IN RELATION TO COMMUNITY RADIO SERVICES

# PART 1

*Modifications to the Broadcasting Act 1990*

**1.** The modifications to the Broadcasting Act 1990 referred to in article 5 are the modifications set out in this Part.

### Licences

**2.** Section 86(3)(**1**) (which makes provision as to the duration of certain licences) has effect as if, for the words "local or national service or to provide an additional service", there were substituted the words "community radio service", and as if, for the word "twelve", there was substituted the word "five".

### Applications for licences

**3.** Section 104(**2**) (which makes provision as to the giving of notice of proposals to grant licences, and as to the content of applications) shall have effect as if—

(a) in subsection (1), for the word "local" there were substituted the words "community radio", and in paragraph (b) of that subsection, for the words from "the area" to the end, there were substituted the words "any areas or localities in the Bailiwick of Guernsey in relation to which no applications may be made";

(b) in subsection (2)(b)—

(i) in sub-paragraph (i), for the words "living in the area or locality for which it would be provided" there were substituted the words "comprising the relevant community", and the word "and" following that sub-paragraph were omitted;

(ii) in sub-paragraph (ii), for the words "living in that area or locality;" there were substituted the words "comprising that community,"; and

(iii) after sub-paragraph (ii), there was added—

"(iii) broaden the range of local services provided in the area or locality of the Bailiwick of Guernsey in which the proposed service would be provided, and

(iv) be of a nature or have a content distinct from that of any other local service in the area or locality of the Bailiwick of Guernsey in which the proposed service would be provided;";

(c) after subsection (2)(b), there were added—

"(ba) evidence that the provision of the service would result in the delivery of significant social gain to the public or the relevant community;";

(d) in subsection (2)(c)—

(**1**) Section 86(3) was substituted by the Communications Act 2003, section 252(2).
(**2**) Section 104 was amended by section 360(3) of, and paragraph 45, Part 1, of Schedule 15 to the Communications Act 2003. Subsections (5) and (6)(a) were repealed by sections 94(2) and 148(2) of, and Part 1 of Schedule 11 to, the Broadcasting Act 1996, as extended by S.I. 2003/3192.

(i) in sub-paragraph (i), after the words "projected financial position", there were added the words "(with regard, in particular, to the number and nature of any persons from whom the applicant proposes to receive the income required to provide the proposed service and the proportion of that income that the applicant proposes to receive from each of those persons)"; and

(ii) in sub-paragraph (ii), after the word "service", there was added—

", and

(iii) as to the effect that the provision of the service would be likely to have on the economic viability of any other local service";

(e) in subsection (3) after the words "subsection (2)(b)", there was added ", (ba)"; and

(f) in subsection (4)—

(i) after "(2)(b)" there were added the words "or (ba)", and

(ii) for the word "local" there were substituted the words "community radio".

**Renewal of local licences and special application procedure**

**4.** Section 104B(**3**) (special application procedure) does not have effect.

**Grant of licences**

**5.**—(1) Section 105(**4**) (which makes provision as to the matters to which OFCOM are required to have regard in determining whether, and to whom, to grant local licences) has effect as if the provision made by that section were re-numbered as subsection (1) of that section, and as if, in that provision—

(a) for the words "local licence" there were substituted the words "community radio licence";

(b) in paragraph (b), for the words from "living in the area or locality for which the service would be provided" there were substituted the words "comprising the relevant community";

(c) in paragraph (c)—

(i) for the word "for", in the first place where it occurs, there was substituted the word "in", and

(ii) for the words "cater for tastes" to the end there were substituted the words "be of a nature or have a content distinct from that of any other local service in the part of the Bailiwick of Guernsey in which the proposed service would be provided"; and

(d) the word "and" immediately before paragraph (d) was omitted, and after the word "service" in that paragraph there were added—

"(e) the extent to which the provision of any such proposed service would result in the delivery of social gain to the public or the relevant community;

(f) the provision that each of the applicants proposes to make in order to be accountable to the relevant community in respect of the provision of the proposed service; and

(g) the provision that each of the applicants proposes to make to allow for access by members of the relevant community to the facilities to be used for the provision of the service and for their training in the use of those facilities".

(**3**) Section 104B was inserted by section 94(1) of the Broadcasting Act 1996, as extended by S.I. 2003/3192.

(**4**) Section 105 was amended by section 360(3) of, and paragraph 48, Part 1, of Schedule 15 to, the Communications Act 2003.

(2) Also, that section has effect as if the following subsections were added at the end—

"(2) Where OFCOM have published a notice under section 104(1), in the case of a proposal of theirs to grant a licence to provide a community radio service, they shall, in determining—

(a) whether, or to whom, to grant the licence in question, and

(b) if they grant it, the terms on which it is granted,

have regard to the need to ensure that any service provided under that licence does not prejudice unduly the economic viability of any other local service, other than a community radio service.

(3) Without prejudice to the generality of subsection (2), a community radio licence may contain such conditions as appear to OFCOM to be appropriate for ensuring that the proportion of such of the relevant income for that licence as is attributable to any arrangements for—

(a) the inclusion in the service provided under that licence of any remunerated advertisement, or

(b) the sponsorship of any programmes included in that service,

does not, in any financial year of the licence holder, exceed such proportion of the total relevant income for that licence in that year as may be specified in those conditions.

(4) Any condition imposed by OFCOM pursuant to subsection (3) must specify such proportion of that total relevant income as appears to OFCOM to be likely to secure the result that—

(a) the inclusion in the service provided under that licence of remunerated advertisements, and

(b) the sponsorship of programmes included in that service,

do not prejudice unduly the economic viability of any other local service, other than a community radio service.

(5) In this section—

"relevant income", in relation to any community radio licence, means any payment or other financial benefit (whether direct or indirect) attributable to the provision of the service under that licence which any relevant person has received, will receive or is or will be entitled to receive in the financial year in question;

"relevant person", in relation to a community radio licence, means the holder of that licence and every person who is connected with that person; and

"remunerated advertisement", in relation to a service provided under a community radio licence, means any advertisement included in that service for which any relevant person has received, will receive or is or will be entitled to receive, any payment or other financial benefit (whether direct or indirect) in consideration for so including it.

(6) Any reference in this section to sponsorship does not include a reference to any payment made, or other financial benefit (whether direct or indirect) conferred, by a person for purposes that are wholly or mainly philanthropic in nature.".

**Character and coverage of services**

**6.** Section 106(**5**) (requirements as to character and coverage of national and local services) has effect as if—

(a) in subsection (1), for the words "national or local" there were substituted the words "community radio";

(b) in subsection (1A)—

(i) in paragraph (b), for the words from "living in" to the end there were substituted the words "comprising the relevant community";

(ii) paragraph (c) and the word "or" following it were omitted;

(iii) in paragraph (d), the words ", in the case of a local licence," were omitted and for the words "living in that area or locality" there were substituted the words "comprising that community"; and

(iv) after paragraph (d), the following were added—

"(e) that the departure would not be prejudicial to the access by members of that community to the facilities used for the provision of the service and for training in the use of those facilities; or

(f) that the departure would not be prejudicial to the delivery of social gain resulting from the provision of the service provided under that licence.";

(c) in subsection (1B), for the word "local" there were substituted the words "community radio", and after that subsection there were added—

"(1C) Without prejudice to the generality of subsection (1), a community radio licence shall include such conditions as appear to OFCOM to be appropriate for securing that the holder of the licence does not enter into, or remain subject to, any arrangement if an effect of that arrangement is to allow another holder of a Broadcasting Act licence or the BBC to exercise an undue influence over the nature and content of the programmes included in the service provided under that licence.

(1D) In subsection (1C), "arrangement" includes any agreement or arrangement with one or more other persons, whether or not it is, or is intended to be, legally enforceable.";

(d) for subsection (2), there was substituted the following subsection—

"(2) Without prejudice to the generality of the provisions in subsections (1) to (1D), a community radio licence shall include such conditions as OFCOM consider are appropriate to ensure that the licence holder provides the service described in the application for that licence.";

(e) in subsection (4), for the word "local" there were substituted the words "community radio";

(f) in subsections (4), (5) and (6), for the words "locality for which", wherever they occur, there were substituted the words "locality in which"; and

(g) in subsection (7), for the word "local" there were substituted the words "community radio", and for the words "living and working in the area or locality in question" there were substituted the words "comprising the relevant community".

(**5**) Section 106(1) was amended by section 360(3) of, and paragraph 49, Part 1, of Schedule 15 to, the Communications Act 2003. The words from ", except" onwards in section 106(1) were repealed by section 312(1) and (2) and 406(7) of, and Schedule 19(1) to, the Communications Act 2003.

### Consultation about change of character of services

**7.** Section 106ZA(**6**) (consultation about change of character of local services) has effect as if, in subsection (1)—

(a) for the words "local licence" there were substituted the words "community radio licence"; and

(b) for the words "paragraphs (b) to (d)" there were substituted the words "paragraphs (b), (d), (e) and (f)".

### Definitions applicable in Part 3

**8.** Section 126(**7**) (interpretation of Part 3) has effect as if—

(a) after the definition of "cash bid" there were added—

""community" means—

(a) the persons who live or work or undergo education or training in a particular Island of the Bailiwick of Guernsey or an area or locality therein, or

(b) persons who (whether or not they fall within paragraph (a)) have one or more interests or characteristics in common;

"community radio licence" means a licence to provide a community radio service;

"community radio service" has the meaning given in article 3(1) of the Community Radio (Guernsey) Order 2013;";

(b) after the definition of "radio transfer date", there were added—

""relevant community" means, in relation to a community radio service, the community or communities which that service is intended to serve;"; and

(c) after the definition of "simulcast radio service", there were added—

""social gain", in relation to a community radio service, has the meaning given by article 3(2) of the Community Radio (Guernsey) Order 2013;".

### Disqualified persons

**9.**—(1) In Part 2 of Schedule 2 (persons who are disqualified from holding certain Broadcasting Act licences), paragraphs 1(1)(f) (individual who is an officer of a political body etc) and 3 (certain publicly-funded bodies) do not have effect.

(2) In paragraph 4 of that Part of that Schedule (persons disqualified on grounds that they are subject to undue influence), sub-paragraph (1)(a)(**8**) has effect as if for the words "relevant body" there were substituted "person", and sub-paragraph (2) (meaning of "relevant body") were omitted.

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(**6**) Section 106ZA was inserted by section 313 of the Communications Act 2003.

(**7**) Section 126 was amended by section 148(1) of, and paragraph 9, Part 1, of Schedule 10 to, the Broadcasting Act 1996, as extended by S.I. 2003/3192, and by sections 256(2) and (3) and 360(3) of, and paragraph 59, Part 1, of Schedule 15 to, the Communications Act 2003 and repealed in part by section 406(7) of, and Schedule 19(1) to, the Communications Act 2003.

(**8**) Paragraph 4(1) of Part 2 of Schedule 2 to the Broadcasting Act 1990 was amended by section 360(3) of, and paragraph 69(1), (4) and (7), Part 1, of Schedule 15 to, the Communications Act 2003.