

SCHEDULE

Article 6

Modifications of the 1996 Act

PART 1

Modifications of Part 2 of the 1996 Act in relation to small-scale radio multiplex services

1. Part 2 of the 1996 Act has effect with the following modifications.
2. Section 40 (radio multiplex services) has effect as if in subsection (4), before paragraph (a) there were inserted—
 - “(za) a small-scale radio multiplex service,”.
3. Section 44 (restrictions on holding of licences under Part 2) has effect as if—
 - (a) in subsection (1)—
 - (i) at the end of paragraph (a) “and” were omitted;
 - (ii) after paragraph (a) there were inserted—
 - “(aa) that a person does not become or remain the holder of a licence if the person is disqualified in relation to that licence by section 44A;”;
 - (b) in subsection (2)—
 - (i) after paragraph (a)(i) there were inserted—
 - “(ia) whether the applicant is disqualified from holding a licence as is mentioned in subsection (1)(aa);”;
 - (ii) at the end of paragraph (db)(ii)(1) there were inserted “or”;
 - (iii) after paragraph (db)(ii) there were inserted—
 - “(iii) whether the licence holder is disqualified from holding a licence by virtue of section 44A;”;
 - (c) in subsection (8), in paragraph (c)(2), after “the 1990 Act” there were inserted “or section 44A”.
4. Part 2 has effect as if after section 44 there were inserted—

“Persons disqualified from holding small-scale radio multiplex licences

44A.—(1) The following persons are disqualified from holding a small-scale radio multiplex licence—

- (a) a person who is not a body corporate;
- (b) a body corporate which is the holder of more than 20 per cent of small-scale radio multiplex licences;
- (c) a body corporate in which a person is a participant where that person is a participant in bodies corporate holding, taken together, more than 20 per cent of small-scale radio multiplex licences;
- (d) a body corporate which is the holder of a national radio multiplex licence or a national sound broadcasting licence;

(1) Paragraph (db) was inserted by section 360(3) of, and paragraph 104 of Schedule 15 to, the 2003 Act.

(2) Paragraph (c) was amended by section 360(3) of, and paragraph 105 of Schedule 15 to, the 2003 Act.

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- (e) a body corporate in which the holder of a national radio multiplex licence or a national sound broadcasting licence is a participant with more than a 30 per cent interest;
- (f) a body corporate in which the holder of a national radio multiplex licence or a national sound broadcasting licence is a participant where the holder of the national radio multiplex licence or national sound broadcasting licence is a participant in one or more bodies holding, taken together, more than 6 small-scale radio multiplex licences;
- (g) a body corporate which is the holder of a local radio multiplex licence where the coverage area of the small-scale radio multiplex licence overlaps with the coverage area of the local radio multiplex licence;
- (h) a body corporate in which the holder of a local radio multiplex licence is a participant with more than a 30 per cent interest where the coverage area of the small-scale radio multiplex licence overlaps with the coverage area of the local radio multiplex licence.

(2) A body corporate which is the holder of a small-scale radio multiplex licence is disqualified from holding another small-scale radio multiplex licence where the coverage area of each of the licences overlaps, in Ofcom's opinion, to a significant extent with the coverage area of the same local radio multiplex service.

(3) Paragraphs (b) and (c) of subsection (1) do not apply where fewer than twenty small-scale radio multiplex licences have been granted.

(4) For the purposes of this section—

- (a) any body corporate which is connected with a person which holds a national radio multiplex licence, a national sound broadcasting licence, a local radio multiplex licence or a small-scale radio multiplex licence is to be treated as if it also were a holder of that licence;
- (b) one person is to be treated as being connected with another person if the person would be so treated for the purposes of Schedule 2 to the 1990 Act⁽³⁾;
- (c) “participant” has the same meaning as in Schedule 2 to the 1990 Act⁽⁴⁾;
- (d) any reference to a participant with more than a 30 per cent interest in a body corporate is a reference to a person who—
 - (i) holds or is beneficially entitled to more than 30 per cent of the shares in that body, or
 - (ii) possesses more than 30 per cent of the voting power in that body.”.

5. Part 2 has effect as if after section 49 there were inserted—

“Reservation of digital capacity for community digital sound programme services

49A.—(1) In exercising their power to grant or renew a small-scale radio multiplex licence, OFCOM must reserve to the holders of community digital sound programme licences such digital capacity as OFCOM consider appropriate to enable at least three community digital sound programme services to be received within the coverage area of the licence.

(3) See paragraph 3 of Part 1 of Schedule 2. This paragraph was substituted by section 73 of, and paragraph 3 of Schedule 2 to, the 1996 Act.

(4) See paragraph 1(1) of Part 1 of Schedule 2.

(2) OFCOM, in performing their duty under subsection (1), must have regard to the likely demand for digital capacity by persons providing or proposing to provide community digital sound programme services in the coverage area of the licence.

(3) A small-scale radio multiplex licence must include such conditions as appear to OFCOM to be appropriate for the purpose of securing that the holder of the licence uses the digital capacity reserved pursuant to subsection (1) solely for the purpose of broadcasting community digital sound programme services.

(4) OFCOM may, if the requirements of subsections (5) to (8) are met, vary a small-scale radio multiplex licence by varying the digital capacity reserved for community digital sound programme services.

(5) OFCOM must have received an application for the variation from the licence holder.

(6) Before deciding whether to grant the application, OFCOM must publish a notice specifying—

- (a) the proposed variation of the licence, and
- (b) the period in which representations may be made to OFCOM about the proposal.

(7) OFCOM must not vary the licence if it appears to them that, if the application were granted, the digital capacity reserved would not be sufficient to enable three community digital sound programme services to be received within the coverage area of the licence.

(8) OFCOM may vary the licence in accordance with the application only if—

- (a) a period of not less than three years has elapsed since the licence was granted,
- (b) a part of the digital capacity reserved in pursuance of this section is unused, and
- (c) they are satisfied—
 - (i) the holder of the licence has taken reasonable steps to identify persons who may be interested in providing a community digital sound programme service within the coverage area of the licence,
 - (ii) the holder of the licence, in contracting or offering to contract with persons providing or proposing to provide community digital sound programme services, has acted in good faith, and
 - (iii) it is unlikely that the unused capacity will be used during the remainder of the licence period.”.

6. Section 50 (local radio multiplex licences) has effect as if—

(a) in the heading, for “Local” there were substituted “Small-scale”;

(b) for subsection (1) there were substituted—

“(1) Where OFCOM propose to grant a licence to provide a small-scale radio multiplex service they must publish, in such manner as they consider appropriate, a notice under subsection (2).”;

(c) in subsection (2)—

- (i) in paragraph (a), for “local” there were substituted “small-scale”;
- (ii) in paragraph (b), after “specifying the” there were inserted “intended”;
- (iii) for paragraph (d) there were substituted—

“(d) specifying the digital capacity on the frequency in that area or locality to be reserved for the broadcasting of community digital sound programme services.”;

(d) after subsection (2) there were inserted—

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- “(2A) In determining the area or locality to be specified under subsection (2)(c), OFCOM must have regard to the following matters—
- (a) the extent to which there is demand for, or support for, the provision of community digital sound programme services and local digital sound programme services in the area or locality;
 - (b) whether the area or locality is appropriate for securing the provision of community digital sound programme services and local digital sound programme services;
 - (c) where the area or locality overlaps with the coverage area of a local radio multiplex service, the desirability of ensuring that the population of the overlapping area is less than 40 per cent of the population of the coverage area of that local radio multiplex service.”;
- (e) for subsection (3) there were substituted—
- “(3) When publishing a notice under subsection (2), OFCOM may publish with the notice such general guidance as to the requirements to be met by applications made in pursuance of the notice as they consider appropriate.”;
- (f) in subsection (4)—
- (i) paragraphs (c), (d), (da)⁽⁵⁾ and (e) were omitted;
 - (ii) in paragraph (f), the words from “and his projected” to “in force” were omitted;
- (g) in subsection (7), paragraph (a)(ii) were omitted.
7. Section 51 (award of local radio multiplex licences) has effect as if—
- (a) in the heading, for “local” there were substituted “small-scale”;
 - (b) in subsection (1), for “local” there were substituted “small-scale”;
 - (c) in subsection (2)—
 - (i) paragraphs (b), (d) and (e) were omitted;
 - (ii) in paragraph (c), the words from “and to maintain” to the end were omitted;
 - (iii) after paragraph (c) there were inserted—
 - “(ca) the desirability of awarding the licence to an applicant that—
 - (i) is a person providing or proposing to provide a community digital sound programme service in that area or locality, or
 - (ii) has as a participant a person providing or proposing to provide a community digital sound programme service in that area or locality,”;
 - (iv) in paragraph (f)⁽⁶⁾, for “living” there were substituted “providing or proposing to provide community or local digital sound programme services”;
 - (v) in paragraph (g)⁽⁷⁾—
 - (aa) after “providing” there were inserted “or proposing to provide community or local”;
 - (bb) “television licensable content services or digital additional services,” were omitted;
 - (d) in subsection (4), for “local” there were substituted “small-scale”;

⁽⁵⁾ Paragraph (da) was inserted by [S.I. 2006/2131](#).

⁽⁶⁾ Paragraph (f) was substituted by section 360(3) of, and paragraph 110 of Schedule 15 to, the 2003 Act.

⁽⁷⁾ Paragraph (g) was amended by [S.I. 2006/2131](#).

(e) after subsection (4) there were inserted—

“(5) For the purposes of this section, “participant” has the same meaning as in Schedule 2 to the 1990 Act.

(6) OFCOM may revoke the award of a small-scale radio multiplex licence to a person where—

(a) a licence has not been granted to that person, and

(b) OFCOM have reasonable grounds for believing that the person to whom the licence was awarded will not provide the service within 18 months of the date the licence was awarded.”.

8. Part 2 has effect as if section 52 (power to require two or more local radio multiplex licences to be granted to one person) were omitted.

9. Section 53 (failure to begin providing licensed service and financial penalties on revocation of licence) has effect as if—

(a) in subsection (1), after paragraph (a) there were inserted—

“(aa) in the case of a small-scale radio multiplex licence, OFCOM have reasonable grounds for believing that that person will not provide the service within 18 months of the date the licence was awarded, or”;

(b) in subsection (5)—

(i) at the end of paragraph (b)(ii) “, or” were inserted;

(ii) after paragraph (b)(ii) there were inserted—

“(c) in the case of a small-scale radio multiplex licence, £100,000.”.

10. Section 54 (conditions attached to national or local radio multiplex licence) has effect as if—

(a) in the heading, after “local” there were inserted “or small-scale”;

(b) in subsection (1)—

(i) in paragraph (c)(ii), after “holder of a local” there were inserted “or community” and at the end of that paragraph there were inserted “and”;

(ii) after paragraph (c)(ii) there were inserted—

“(iii) in the case of a small-scale radio multiplex licence, by the BBC or the holder of a local or community digital sound programme licence under that section.”;

(iii) in paragraph (g), for “high” there were substituted “reasonable” and at the end of that paragraph “and” were omitted;

(iv) after paragraph (h)(8) there were inserted—

“(i) in the case of a small-scale radio multiplex licence, that the holder of the licence publishes information, in such manner as OFCOM consider appropriate, as to the payments to be made by the holders of community and local digital sound programme licences for the broadcasting of their services under the licence, and

(j) in the case of a small-scale radio multiplex licence, that the holder of the licence provides to OFCOM information, in such manner as OFCOM consider appropriate, on the community and local digital sound programme services provided for broadcasting by means of the service

(8) Paragraph (h) was substituted by section 259 of the 2003 Act.

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(including whether any community digital sound programme service is using digital capacity reserved in pursuance of section 49A).”.

11. Section 54A (variation of radio multiplex licences: frequency or licensed area)⁽⁹⁾ has effect as if—

(a) in subsection (2)—

(i) for “(6)” there were substituted “(7)”;

(ii) after “local” there were inserted “or small-scale”;

(b) after subsection (6) there were inserted—

“(7) In the case of a small-scale radio multiplex licence, OFCOM may vary the licence in accordance with the application only if they are satisfied that doing so would not unacceptably reduce the number of community or local digital sound programme services available to persons living in the area or locality for which, before the proposed variation, the small-scale radio multiplex service is required to be available.”.

12. Section 58 (duration and renewal of national or local radio multiplex licences) has effect as if—

(a) in the heading, for “national or local” there were substituted “small-scale”;

(b) in subsection (1)—

(i) before “radio” there were inserted “small-scale”;

(ii) for “twelve” there were substituted “seven”;

(c) for subsection (2) there were substituted—

“(2) A small-scale radio multiplex licence may be renewed on one occasion for a period of five years beginning with the date on which it would otherwise expire.”;

(d) for subsection (3) there were substituted—

“(3) An application for renewal of a small-scale radio multiplex licence under subsection (2) may be made by the licence holder not earlier than 18 months before the date on which it would otherwise cease to be in force and not later than the day falling six months before that date.”;

(e) in subsection (4)—

(i) in paragraph (a)(i), “46(4)(b) or” were omitted;

(ii) paragraph (a)(ii) were omitted;

(iii) in paragraph (b), “46(4)(b)(i) and (ii) or” were omitted;

(iv) at the end of paragraph (b) there were inserted “, and” and after that paragraph there were inserted—

“(c) specify the digital capacity on the frequency to be reserved for the broadcasting of community digital sound programme services.”;

(f) subsections (8) and (9) were omitted;

(g) in subsection (10), the words from “but in the case” to the end were omitted;

(h) in subsection (11), before “radio” there were inserted “small-scale”;

(i) subsections (12) and (12A)⁽¹⁰⁾ were omitted;

(j) in subsection (13), before “radio” there were inserted “small-scale” and “46(1) or” were omitted.

⁽⁹⁾ Section 54A was inserted by section 35 of the Digital Economy Act 2010 (c.24).

⁽¹⁰⁾ Subsection (12A) was inserted by section 360(3) of, and paragraph 117 of Schedule 15 to, the 2003 Act.

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13. Section 59 (enforcement of national or local radio multiplex licences) has effect as if—
- (a) in the heading, after “local” there were inserted “or small-scale”;
 - (b) after subsection (4) there were inserted—
 - “(4A) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of a small-scale radio multiplex licence must not exceed £100,000.”.
14. Section 60 (licensing of digital sound programme services) has effect as if in subsection (1), in paragraph (b), after “of a local” there were inserted “or small-scale”.

PART 2

Modifications of Part 2 of the 1996 Act in relation to community digital sound programme services

15. Part 2 of the 1996 Act has effect with the following modifications.
16. Section 60 (licensing of digital sound programme services) has effect as if—
- (a) in subsection (1), at the end of paragraph (b) there were inserted “, and” and after that paragraph there were inserted—
 - “(c) a “community digital sound programme service” if it has the description set out in article 4 of the 2019 Order.”;
 - (b) in subsection (2), at the end of paragraph (b) there were inserted “, or” and after that paragraph there inserted—
 - “(c) a licence to provide community digital sound programme services (in this Part referred to as a “community digital sound programme licence”).”;
 - (c) after subsection (2) there were inserted—
 - “(2A) The provision of more than one community digital sound programme service requires a separate licence under this Part to be granted and held in respect of each service.”;
 - (d) for subsection (6) there were substituted—
 - “(6) Where an application for a community digital sound programme licence is made to OFCOM in accordance with the provisions of this section, they must, in determining whether to grant the licence in question, have regard to the extent to which—
 - (a) the provision of the proposed service would result in the delivery of social gain to the public or the relevant community;
 - (b) members of the relevant community are given opportunities to participate in the operation and management of the proposed service;
 - (c) the applicant is accountable to the relevant community in respect of the provision of the proposed service.”.
17. Section 61 (duration and conditions of digital sound programme licence) has effect as if—
- (a) in the heading, after “conditions of” there were inserted “community”;
 - (b) in subsection (1), before “digital” there were inserted “community”;
 - (c) in subsection (2)—
 - (i) in the words before paragraph (a)(11), before “digital” there were inserted “community”;

(11) Paragraph (a) was amended by section 360(3) of, and paragraph 120 of Schedule 15 to, the 2003 Act.

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- (ii) in paragraph (a)—
 - (aa) there were omitted “, of a television multiplex service or of a general multiplex service”;
 - (bb) after “provision of a” there were inserted “community”;
 - (iii) sub-paragraphs (ii) and (iii) of paragraph (a) were omitted;
 - (iv) for paragraph (b) there were substituted—
 - “(b) when any such agreement is varied so far as it relates to the matter mentioned in paragraph (a)(i), to notify OFCOM of the variation so far as relating to that matter, and”;
 - (v) in paragraph (c)(12)—
 - (aa) before “digital” there were inserted “community”;
 - (bb) there were omitted “, of a television multiplex service or of a general multiplex service”;
- (d) after subsection (2) there were inserted—
“(2A) A community digital sound programme licence must include such conditions as appear to OFCOM to be appropriate for ensuring that the community digital sound programme service provided under the licence is only broadcast on a single radio multiplex service.”.

18. Part 2 has effect as if after section 61 there were inserted—

“Advertising restrictions for community digital sound programme services

61A.—(1) Subject to subsections (2) and (3), every licence to provide a community digital sound programme service must contain such conditions as appear to OFCOM to be appropriate for—

- (a) permitting the relevant income for that licence attributable to any arrangements for—
 - (i) the inclusion in the service provided under that licence of any remunerated advertisement, or
 - (ii) the sponsorship of any programmes included in that service, to include the sum of £15,000 per financial year of the licence holder (“the fixed revenue allowance”), and
 - (b) ensuring that where the relevant income attributable to the arrangements set out in paragraph (a) exceeds the fixed revenue allowance in any financial year of the licence holder, any such relevant income in excess of the fixed revenue allowance does not exceed 50 per cent of the total relevant income (disregarding the fixed revenue allowance) for that licence in that year.
- (2) Where—
- (a) a community digital sound programme service corresponds to a community radio service, and
 - (b) the licence to provide that community radio service includes conditions pursuant to section 105(4)(b) of the 1990 Act (as modified by the 2004 Order),

(12) Paragraph (c) was amended by section 360(3) of, and paragraph 120 of Schedule 15 to, the 2003 Act.

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the licence to provide that community digital sound programme service must contain such conditions as appear to OFCOM to be appropriate for ensuring that the relevant income for that licence attributable to arrangements set out in subsection (1)(a) is zero.

(3) Where—

- (a) a community digital sound programme service corresponds to a community radio service, and
- (b) the licence to provide that community radio service includes conditions pursuant to section 105(4)(c) of the 1990 Act (as modified by the 2004 Order),

the licence to provide that community digital sound programme service must contain such conditions as appear to OFCOM to be appropriate for ensuring that the relevant income for that licence attributable to arrangements set out in subsection (1)(a) in any financial year of the licence holder does not exceed 50 per cent of the total relevant income for that licence in that year.

(4) The Secretary of State may, from time to time, request OFCOM to review whether the £15,000 figure in subsection (1) remains appropriate.

(5) In this section—

“relevant income”, in relation to a community digital sound programme 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 digital sound programme licence, means the holder of that licence and every person connected with the licence holder;

“remunerated advertisement”, in relation to a service provided under a community digital sound programme 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.

(7) For the purposes of this section, a community digital sound programme service corresponds to a community radio service if, and only if, in every calendar month—

- (a) at least 80 per cent of so much of the community radio service as consists of programmes, consist of programmes which are also included in the community digital sound programme service in that month, and
- (b) at least 50 per cent of so much of the community radio service as consists of such programmes is broadcast at the same time on both services.

(8) In this section, one person is to be treated as being connected with another person if the person would be so treated for the purposes of Schedule 2 to the 1990 Act.

Requirements as to the characteristics of community digital sound programme services

61B.—(1) A community digital sound programme licence must include such conditions as appear to OFCOM to be appropriate for securing that the characteristics of the licensed service, as proposed by the licence holder when making the application, are maintained during the period for which the licenced service is broadcast.

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(2) Conditions included in a licence for the purposes of subsection (1) may provide that OFCOM must, in determining whether to consent to a departure from the characteristics of the licensed service, have regard to extent to which—

- (a) the provision of the service would continue to result in the delivery of social gain to the public or the relevant community;
- (b) members of the relevant community would continue to be given opportunities to participate in the operation and management of the service;
- (c) the applicant would continue to be accountable to the relevant community in respect of the provision of the service.

(3) Without prejudice to the generality of subsection (1), a community digital sound programme licence must 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 or the Welsh Authority to exercise an undue influence over the nature and content of the programmes included in the service provided under that licence.

(4) In subsection (3), “arrangement” includes any agreement or arrangement with one or more other persons, whether or not it is, or is intended to be, legally enforceable.”.

19. Section 62 (enforcement of digital sound programme licences) has effect as if after subsection (6) there were inserted—

“(6A) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of a community digital sound programme licence must not exceed £100,000.”.

PART 3

Modifications of Part 2 of the 1996 Act in relation to community digital sound programme services and small-scale radio multiplex services

20. Part 2 of the 1996 Act has effect with the following modifications.

21. Section 72 (interpretation of Part 2) has effect as if the following definitions were inserted in the appropriate places—

““2004 Order means the Community Radio Order 2004;

“2019 Order” means the Small-scale Radio Multiplex and Community Digital Radio Order 2019⁽¹³⁾;

“Broadcasting Act licence” has the meaning given in paragraph 1 of Schedule 2 to the 1990 Act⁽¹⁴⁾;

“community” has the meaning given in article 2(1) of the 2019 Order;

“community digital sound programme service” is to be construed in accordance with section 60(1) and “community digital sound programme licence” means a licence to provide a community digital sound programme service;

“national sound broadcasting licence” means a licence to provide a sound broadcasting service (within the meaning of Part 3 of the 1990 Act) which is a national service (within the meaning of that Part);

“overlap” is to be construed in accordance with article 2(5) of the 2019 Order;

⁽¹³⁾ S.I. 2019/****.

⁽¹⁴⁾ This definition was inserted by section 360(3) of, and paragraph 69 of Schedule 15 to, the 2003 Act.

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“relevant community” means, in relation to a community digital sound programme service, the community or communities which that service is intended to serve;

“small-scale radio multiplex service” has the meaning given by article 3 of the 2019 Order and “small-scale radio multiplex licence” means a licence to provide such a service;

“social gain” has the meaning given in article 2(1) and (2) of the 2019 Order;”.