

## SCHEDULE

### Modifications of the 1996 Act

## 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)(1), before “digital” there were inserted “community”;
    - (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”;

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

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(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)(2)—

(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),

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

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

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- (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.

(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;

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- (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.”.