

Draft Order laid before Parliament under section 262(5) of, and paragraph 17(2) of Schedule 14 to, the Communications Act 2003, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2004 No.

BROADCASTING

Community Radio Order 2004

Made - - - - 2004
Coming into force - - 2004

The Secretary of State, in exercise of the powers conferred upon her by sections 262 and 402(3) of, and paragraphs 11 and 13 of Schedule 14 to, the Communications Act 2003⁽¹⁾, considering that the provision of services of the description set out in this Order would confer significant benefits on the public or on the communities for which they are provided⁽²⁾ and having consulted the Office of Communications as regards the provisions of this Order made under the said Schedule 14⁽³⁾, hereby makes the following Order, a draft of which has been laid before Parliament in accordance with section 262(5) of, and paragraph 17(2) of Schedule 14 to, that Act and approved by a resolution of each House of Parliament:

Citation and commencement

- 1.—(1) This Order may be cited as the Community Radio Order 2004.
- (2) This Order shall come into force on the day after the day on which it is made.

Interpretation

- 2.—(1) In this Order—
 - “the 1990 Act” means the Broadcasting Act 1990⁽⁴⁾;
 - “the 2003 Act” means the Communications Act 2003;
 - “community” means—

(1) 2003 c. 21.
(2) Section 262(2) of the 2003 Act provides that the Secretary of State is not to make an order under section 262 in relation to a description of services unless the description is of services to be provided primarily for the good of members of the public or of a particular community (rather than for commercial reasons), and she considers that the provision of services of that description confer, or would confer, significant benefits on the public or on the communities for which they are provided.
(3) Such consultation is required by paragraph 17(1) of Schedule 14 to the Communications Act 2003 in the case of any order under that Schedule other than one that is confined to giving effect to recommendations made by OFCOM in a report of a review under section 391 of that Act.
(4) 1990 c. 42.

- (a) the persons who live or work or undergo education or training in a particular area or locality, 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 under Part 3 of the 1990 Act (as it has effect by virtue of this Order) to provide a community radio service;

“community radio service” means a local service having the characteristics set out in article 3;

“coverage area” means, in relation to a service provided under a local sound broadcasting licence, the area in the United Kingdom within which that service is capable of being received at a level satisfying such technical standards as have been laid down by OFCOM for the purposes of Part 2 of the Media Ownership (Local Radio and Appointed News Provider) Order 2003(5) in relation to such a service;

“local authority” has the meaning given in paragraph 1(1)(6) of Part 1 of Schedule 2 to the 1990 Act;

“local service”, “national service” and “restricted service” each has the meaning given in section 245(4) of the 2003 Act;

“potential audience” means, in relation to any local service, the persons who reside within the coverage area for that service;

“social enterprise” means a business which has as its primary objective the support of one or more projects of a social nature (rather than the production of a financial profit);

“social gain” has the meaning given by paragraph (2).

(2) In relation to a community radio service, “social gain” means the achievement, in respect of individuals or groups of individuals in the community that the service is intended to serve, or in respect of other members of the public, of the following objectives—

- (a) the provision of sound broadcasting services to individuals who are otherwise underserved by such services,
- (b) the facilitation of discussion and the expression of opinion,
- (c) the provision (whether by means of programmes included in the service or otherwise) of education or training to individuals not employed by the person providing the service, and
- (d) the better understanding of the particular community and the strengthening of links within it,

and may also include the achievement of other objectives of a social nature and, in particular, those mentioned in paragraph (3).

(3) Those objectives are—

- (a) the delivery of services provided by local authorities and other services of a social nature and the increasing, and wider dissemination, of knowledge about those services and about local amenities;
- (b) the promotion of economic development and of social enterprises;
- (c) the promotion of employment;
- (d) the provision of opportunities for the gaining of work experience;
- (e) the promotion of social inclusion;

(5) S.I. 2003/3299.

(6) The definition of “local authority” in paragraph 1(1) of Part 1 of Schedule 2 to the Broadcasting Act 1990 was amended by section 66(6) of, and paragraph 89 of Schedule 16 to, the Local Government (Wales) Act 1994 (c. 19) and was repealed in part by section 66(8) of, and Schedule 18 to, that Act. It was also amended by section 180(1) of, and paragraph 166 of Schedule 13 to, the Local Government etc. (Scotland) Act 1994 (c. 39).

- (f) the promotion of cultural and linguistic diversity;
- (g) the promotion of civic participation and volunteering.

(4) For the purposes of this Order, two local sound broadcasting licences overlap if (but only if) the potential audience of the service provided under either of those licences includes 50 per cent. or more of the potential audience of the service provided under the other licence.

(5) In this Order, in relation to any service which is intended to serve more than one community, any reference to the community which that service is intended to serve shall be taken to include a reference to every such community.

(6) In this Order, one person shall be treated as being connected with another person if he would be so treated for the purposes of Schedule 2(7) to the 1990 Act.

Characteristics of community radio services

3.—(1) It is a characteristic of community radio services that they are local services provided primarily—

- (a) for the good of members of the public, or of particular communities, and
- (b) in order to deliver social gain,

rather than primarily for commercial reasons or for the financial or other material gain of the individuals involved in providing the service.

(2) It is a characteristic of every community radio service that it is intended primarily to serve one or more communities (whether or not it also serves other members of the public).

(3) It is a characteristic of every community radio service that the person providing the service—

- (a) does not do so in order to make a financial profit by so doing, and
- (b) uses any profit that is produced in the provision of the service wholly and exclusively for securing or improving the future provision of the service, or for the delivery of social gain to members of the public or the community that the service is intended to serve.

(4) It is a characteristic of every community radio service that members of the community it is intended to serve are given opportunities to participate in the operation and management of the service.

(5) It is a characteristic of every community radio service that, in respect of the provision of that service, the person providing the service makes himself accountable to the community that the service is intended to serve.

Application of broadcasting legislation

4. The provisions of the 1990 Act and the 2003 Act shall have effect in relation to a community radio service with the modifications set out in the Schedule.

(7) Paragraph 3 of Part 1 of Schedule 2 to the Broadcasting Act 1990 sets out which persons are to be treated as being connected with a particular person, for the purposes of that Schedule. This paragraph was substituted by section 73 of, and paragraph 3, Part 1, of Schedule 2 to, the Broadcasting Act 1996 (c. 55). Paragraph 3 of Part 1 of Schedule 2 to the Broadcasting Act 1990 must be read with the definition of “control” in paragraph 1(1) (taken with paragraph 1(3) and (3A)) of Part 1 of that Schedule. This definition was amended by section 73 of, and paragraph 1(1) and (2)(c), Part 1, of Schedule 2 to, the Broadcasting Act 1996. Paragraph 1(3) and (3A) were substituted for paragraph 1(3) by section 73 of, and paragraph 1(1) and (4), Part 1, of Schedule 2 to, the Broadcasting Act 1996 and paragraph 1(3)(b) was amended in part by section 357(1) of the Communications Act 2003. Paragraph 3 of Part 1 of Schedule 2 to the Broadcasting Act 1990 must also be read with the definitions of “associate” in paragraph 1(1A) and 1(2) of Part 1 of that Schedule. Paragraph 1(1A) was inserted by section 73 of, and paragraph 1(1) and (3), Part 1, of Schedule 2 to, the Broadcasting Act 1996.

Amendment of the Media Ownership (Local Radio and Appointed News Provider) Order 2003

5. The Media Ownership (Local Radio and Appointed News Provider) Order 2003(8) shall be amended by inserting after article 2 the following article—

“Community radio licences

2A. Nothing in this Order shall apply in respect of—

- (a) any local sound broadcasting service that is a community radio service, as defined by article 2(1) of the Community Radio Order 2004, or
- (b) any licence to provide such a service.”

Disqualified persons

6.—(1) In addition to the modifications made by article 4 of, and the Schedule to, this Order, Part 2 of Schedule 2(9) to the Broadcasting Act 1990 shall have effect in relation to community radio licences as if the persons who are disqualified persons by virtue of that Part of that Schedule included, in relation to such licences, any person falling within paragraph (2).

(2) Those persons are—

- (a) any person who is not a body corporate;
- (b) any body corporate falling within paragraph (3); and
- (c) any C4 company or S4C company that would not otherwise be a disqualified person by virtue of paragraph (3).

(3) A body corporate falls within this paragraph if—

- (a) that body holds at least one relevant Broadcasting Act licence, or
- (b) that body is connected with a person who holds one or more such licences.

(4) In this article, a relevant Broadcasting Act licence is a Broadcasting Act licence which is not a licence to provide one of the following services—

- (a) a community radio service;
- (b) a digital sound programme service;
- (c) a restricted service;
- (d) a radio licensable content service;
- (e) a restricted television service;

(8) S.I. 2003/3299.

(9) In Part 2 of Schedule 2 to the Broadcasting Act 1990, paragraph 1(1) was amended by section 73 of, and paragraph 6(1) and (2), Part 2, of Schedule 2 to, the Broadcasting Act 1996 and by section 349(1)(a) and 360(3) of, and paragraph 69(1), (4) and (5), Part 1, of Schedule 15 to, the Communications Act 2003 and was repealed in part by sections 348(1) and 406(7) of, and Schedule 19(1) to, the Communications Act 2003. Paragraph 1(1A) was inserted by section 349(1)(b) of the Communications Act 2003. Paragraph 1(2) and (3) were repealed by section 406(7) of, and Schedule 19(1) to, the Communications Act 2003. Paragraph 2 was amended by section 348(2) and (3) of the Communications Act 2003. Paragraph 3(1) was amended by section 73 of, and paragraph 7, Part 2, of Schedule 2 to, the Broadcasting Act 1996 and by section 360(3) of, and paragraph 69(1) and (6), Part 1, of Schedule 15 to, the Communications Act 2003. Paragraph 4(1) was amended by section 360(3) of, and paragraph 69(1), (4) and (7), Part 1, of Schedule 15 to, the Communications Act 2003. Paragraph 4(2) was amended by sections 348(4) and 360(3) of, and paragraph 69(1), (8)(a) and (b), Part 1, of Schedule 15 to, the Communications Act 2003. Paragraph 5 was repealed in part by sections 73 and 148(2) of, and paragraph 8, Part 2, of Schedule 2 and Part 1 of Schedule 11 to, the Broadcasting Act 1996 and was amended by section 360(3) of, and paragraph 69(1) and (4), Part 1, of Schedule 15 to, the Communications Act 2003. Paragraph 5A was inserted by section 73 of, and paragraph 9, Part 2, of Schedule 2 to, the Broadcasting Act 1996 and was repealed in part by sections 360(3) and 406(7) of, and paragraph 69(1), (9)(a), (b) and (c), Part 1, of Schedule 15 to, the Communications Act 2003. Paragraph 6 was amended by section 360(3) of, and paragraph 69(1) and (4), Part 1, of Schedule 15 to, the Communications Act 2003.

(f) a television licensable content service.

Restrictions on holding of community radio licences

7.—(1) No body corporate may hold more than one community radio licence at any one time.

(2) For the purposes of this article, any body corporate which is connected with another such body which holds such a licence shall be treated as if it also were a holder of that licence.

Name
Secretary of State for Culture Media and Sport

SCHEDULE

Article 4

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 4 are the modifications set out in this Part.

Licences

2. Section 86(3)(10)(which makes provision as to the duration of certain licences) shall have 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(11) (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 United Kingdom 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;”;
 - (iii) after sub-paragraph (ii), there was added—
 - “(iii) broaden the range of local services provided in the area or locality in which the proposed service would be provided, and
 - (iv) be of a nature or have a content distinct from that of any local service the licence for which would overlap with that for the proposed service;”;
- (c) after subsection (2)(b), there was added—
 - “(ba) evidence that the provision of the service will result in the delivery of significant social gain to the public or the relevant community;”;
- (d) in subsection (2)(c)—
 - (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

(10) Section 86 was amended by section 136 of, and paragraph 5 of Schedule 8 to, the Broadcasting Act 1996 and by sections 252(1) and 360(3) of, and paragraph 33(1), (2) and (3), Part 1, of Schedule 15 to the Communications Act 2003. Section 86(3) was amended by section 252(2) of that Act.

(11) 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.

whom he proposes to receive the income required to provide the proposed service and the proportion of that income that he 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),”;

(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. Sections 104A(12) (renewal of local licences) and 104B(13) (special application procedure) shall not have effect.

Grant of licences

5.—(1) Section 105(14) (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) shall have 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), for the word “for”, in the first place where it occurs, there was substituted the word “in”, and 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 the licence for which would overlap with the licence for the proposed service”;

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

“(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 render himself accountable to the relevant community in respect of the provision of the proposed service;

(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”.

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

“(2) OFCOM shall not grant a community radio licence to any applicant who proposes to receive from—

(12) Section 104A was inserted by section 94(1) of the Broadcasting Act 1996.

(13) Section 104B was inserted by section 94(1) of the Broadcasting Act 1996.

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

- (a) any one person, or
- (b) from any one person and any other persons connected with him, taken together, more than 50 per cent. of the income that would be required in each financial year of the applicant to provide the proposed service in that year.

(3) 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.

(4) Accordingly, and without prejudice to the generality of subsection (3)—

- (a) OFCOM shall not grant a licence to provide a community radio service in any case where the licence, if granted, would overlap with another local licence for a service, other than a community radio service, the potential audience of which includes no more than 50,000 persons who have attained the age of 15 years;
- (b) every licence to provide a community radio service that overlaps with any other local licence the potential audience of which includes more than 50,000 persons who have attained the age of 15 years, but no more than 150,000 such persons, must contain such conditions as appear to OFCOM to be appropriate for prohibiting—
 - (i) the inclusion in that service of any remunerated advertisement, and
 - (ii) the sponsorship of any programmes included in that service; and
- (c) every licence to provide a community radio service, other than a licence to provide a service such as falls within paragraph (b) above, must contain the conditions mentioned in subsection (5).

(5) Subject to subsection (6), the conditions are those that appear to OFCOM to be appropriate, in the case of the community radio licence in question, for ensuring that the amount 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.

(6) Any condition imposed by OFCOM pursuant to subsection (4)(c) must specify such proportion of that total relevant income as—

- (a) appears to OFCOM to be likely to secure the result that—
 - (i) the inclusion in the service provided under that licence of remunerated advertisements, and
 - (ii) the sponsorship of programmes included in that service, do not prejudice unduly the economic viability of any other local service; and
- (b) is such as to secure that 50 per cent. of that income, or some lesser proportion of it, is attributable to the arrangements mentioned in subsection (5)(a) and (b).

(7) 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 him; 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.

(8) 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 (requirements as to character and coverage of national and local services) shall have effect as if—

(a) in subsection (1)(15), for the words “national or local”, there were substituted the words “community radio”;

(b) in subsection (1A)(16)—

(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 the word “departure” in that paragraph there 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)(17), 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

(15) 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.

(16) Section 106(1A) was inserted by section 312(1) and (3) of the Communications Act 2003.

(17) Section 106(1B) was inserted by section 312(1) and (3) of the Communications Act 2003.

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.

(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)(18), for the word “local” there were substituted the words “community radio”;

(f) in subsections (4), (5)(19) and (6), for the words “locality for which”, wherever they occur, there were substituted the words “locality in which”;

(g) in subsection (7)(20), for the word “local” there were substituted the words “community radio”, and for the words “living and working in the area or locality” there were substituted the words “comprising the relevant community”.

Definitions applicable in Part 3

7. Section 126(21) (interpretation of Part 3) shall have 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 area or locality, 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 2(1) of the Community Radio Order 2004;

“coverage area” means, in relation to a service provided under a local sound broadcasting licence, the area in the United Kingdom within which that service is capable of being received at a level satisfying such technical standards as have been laid down by OFCOM for the purposes of the OFCOM for the purposes of Part 2 of the Media Ownership (Local Radio and Appointed News Provider) Order 2003 in relation to such a service”;

(b) after the definition of “local service”, “national service” and “restricted service”, there were added—

““overlap” shall be construed in accordance with article 2(4) of the Community Radio Order 2004;

“potential audience” has the meaning given in article 2(1) of the Community Radio Order 2004;” and

(18) Section 106(4) and (6) were amended by section 360(3) of, and paragraph 49, Part 1, of Schedule 15 to, the Communications Act 2003.

(19) Section 106(5) was substituted by section 312(1) and (4) of the Communications Act 2003.

(20) Section 106(7) was inserted by section 312(1) and (5) of the Communications Act 2003.

(21) Section 126 was amended by section 148(1) of, and paragraph 9, Part 1, of Schedule 10 to, the Broadcasting Act 1996 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.

- (c) 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;”.

Disqualified persons

8.—(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) shall 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)(**22**) shall have effect as if for the words “relevant body” there were substituted “person”, and sub-paragraph (2) (meaning of “relevant body”) were omitted.

PART 2

Modifications to the Communications Act 2003

9. The modifications to the Communications Act 2003 referred to in article 4 are the modifications set out in this Part.

Regulation by OFCOM of independent radio services

10. Section 245 shall have effect as if, in subsection (4)(b), after the words “United Kingdom;” the following paragraph was added—

- “(ba) a service is a community radio service if it is a local service having the characteristics set out in article 3 of the Community Radio Order 2004;”.

Provisions that do not have effect

11. Sections 314 (character and content of services), 355 and 356 (variation of licences following change of control) shall not have effect.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under section 262 of the Communications Act 2003 (“the 2003 Act”), contains provision to create a special regulatory framework for a new category of radio broadcasting services, to be known as “community radio services”. The provision includes modifications to the Broadcasting Act 1990 (“the 1990 Act”) and the 2003 Act.

(22) Paragraph 4(1)(a) 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.

Article 2(1) defines a community radio service as a form of local sound broadcasting service having the characteristics set out in article 3.

The first such characteristic is that all community radio services are provided primarily for the good of members of the public or of particular communities (a community being defined by article 2(1)) rather than primarily for commercial reasons. This is pursuant to the requirement in section 262(2) (a) of the 2003 Act.

In addition, a service must be provided in order to deliver social gain (article 3(1)(b)). Social gain is defined in article 2 as the achievement of the four objectives set out in paragraph (2) of that article together with the achievement of any other objectives of a social nature, which may include those listed in paragraph (3).

Further characteristics of a community radio service are that it must be provided primarily to serve one or more communities (article 3(2)), it must be run on a not-for-profit or non profit-distributing basis (article 3(3)), that members of the community or communities that it is intended to serve are given opportunities to help run the service (article 3(4)), and that arrangements are made to make the provider of the service accountable for its provision to the community or communities it is intended to serve (article 3(5)).

Article 5 amends the Media Ownership (Local Radio and Appointed News Provider) Order 2003 (S.I.2003/3299) so that it does not apply to community radio services or the licences to provide them. Amongst other things, that Order imposes restrictions on the number of local sound broadcasting licences that any person may hold. This Order imposes alternative arrangements. In relation to community radio licences, ownership is restricted by Part 2 of Schedule 2 to the 1990 Act, as modified by this Order, and by the provisions set out in articles 6 and 7.

The Schedule to the Order, which is introduced by article 4, sets out the modifications with which the provisions in the 1990 Act and the 2003 Act have effect in relation to community radio services.

Paragraph 2 modifies section 86(3)(a) of the 1990 Act (which makes provision as to the duration of local radio licences) to provide for community radio licences to last for a maximum of five years, rather than the maximum of twelve years that local licences usually last for.

Paragraph 3 modifies the effect of section 104 of the 1990 Act by adapting the existing requirements relating to the publication by OFCOM of proposals for new licences to provide services including local sound broadcasting services, and for applications for such licences. The paragraph makes modifications to reflect the fact that community radio services will be provided to serve specified communities rather than particular areas (paragraph 3(a), (b)(i) and (ii) and (f)(ii)). In addition, paragraph 3(b)(iii) and (c) add to the matters that an application for a community radio licence must address. Paragraph 3(d)(i) and (ii) modify the requirements relating to the information that OFCOM may demand from the applicant.

Paragraph 5 modifies the effect of section 105 of the 1990 Act, which sets out special requirements relating to the grant of local licences. Paragraph 5(1) makes modifications reflecting those made by paragraph 3(a), (b)(i) and (ii) and (f)(ii) to section 104 (paragraph 5(1)(a) to (c)). The modifications also reflect the characteristics of a community radio service set out in article 3 (paragraph 5(1)(d)). Paragraph 5(2) inserts additional provisions into section 105 relating to the circumstances in which OFCOM may grant a community radio licence and the conditions that they must include in such a licence, if granted. The new subsection (2) states that a community radio licence may not be granted to an applicant who proposes to receive more than 50 per cent. of the income he needs to provide his proposed service from any one source. The new subsections (3) to (6) impose requirements to ensure that the grant of a community radio licence does not unduly prejudice the economic viability of any other local sound broadcasting service. These requirements relate, in particular, to the proportion of his income that any holder of a community radio licence may receive in respect of advertisements or sponsorship. Section 262(3) of the 2003 Act enables an Order such as this to impose prohibitions or limitations on the inclusion of advertisements and sponsored programmes in community radio

services. The effect of new subsection (8) is that the restrictions do not apply to sponsorship that is made available for purposes that are mainly philanthropic in nature.

Paragraph 6 modifies the effect of section 106 of the 1990 Act, which sets out requirements as to the character and coverage of national and local services. Paragraph 6(a), (b)(i) to (iii) and (e) to (g) make modifications similar to those made to section 104 by paragraph 3(a), (b)(i) and (ii) and (f)(ii), whilst those made by paragraph 6(b)(iv) relate to characteristics of community radio services. Paragraph 6(c) makes modifications designed to ensure that other broadcasters are not able to exercise an undue influence over providers of community radio services, whilst paragraph 6(d) allows OFCOM to impose licence conditions to ensure that the holder of any community radio licence provides the service that he proposed to provide in his application for that licence.

Paragraph 7 modifies section 126 of the 1990 Act, which supplies various definitions for the purposes of Part 3 of that Act.

Paragraph 8 modifies the effect of Part 2 of Schedule 2 to the 1990 Act, which makes provision relating to restrictions on the holding of licences. In particular, paragraph 8(1) disapplies paragraph 3 of that Part of that Schedule, which would otherwise have the effect that community radio licence holders could receive no more than half their annual income from public funds. Paragraph 8(2) modifies paragraph 4 of the same Part so that a person will be treated as a disqualified person, in relation to a community radio licence, if it appears to OFCOM that any other person is exerting an influence over him that is, or would be, contrary to the public interest.

Paragraph 10 makes a consequential modification to section 245 of the 2003 Act (which, amongst other things, defines certain kinds of radio service), whilst paragraph 11 disapplies sections 314, 355 and 356 of that Act (which make provision as to the character and content of local services and as to the variation of local licences after a change of control).

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.