

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.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2015 No.

BROADCASTING

The Community Radio (Amendment) Order 2015

Made - - - -

Coming into force - -

6th April 2015

The Secretary of State makes the following Order in exercise of the powers conferred by sections 262 and 402(3) of, and paragraph 11 of Schedule 14 to, the Communications Act 2003(a).

The community radio services to which this Order applies are, or are to be, provided primarily for the good of members of the public or of a particular community, rather than for commercial reasons. The Secretary of State considers that the provision of the services described in this Order confers, or would confer, significant benefits on the public or on the communities for which they are provided.

In accordance with paragraph 17(1) of Schedule 14 to that Act, the Secretary of State has consulted OFCOM.

In accordance with section 262(5) of, and paragraph 17(2) of Schedule 14 to, that Act, a draft of this Order was laid before and approved by a resolution of each House of Parliament.

Citation and commencement

1. This Order may be cited as the Community Radio (Amendment) Order 2015 and comes into force on 6th April 2015.

Amendment of the Community Radio Order 2004

2. In article 6(4) of the Community Radio Order 2004 (disqualified persons) (b), at the end of subparagraph (f) insert—

“;

(g) a local digital television programme service.”

3. The Schedule to the Community Radio Order 2004 is amended as follows.

(a) 2003 c.21.

(b) S.I. 2004/1944. The Order was amended by S.I. 2010/118.

4. In paragraph 4 (Renewal of Local Licences and Special Application Procedure), after the words “Section 104A (renewal of local licences)” insert “104AA (Further renewal of local licences), 104AB (renewal under section 104AA: nomination of national services), 104AC (variation of conditions relating to digital services)(a)”.

5.—(1) Paragraph 5(2)(b) (which adds subsections (2) to (8) in section 105 of the Broadcasting Act 1990 as it has effect in relation to a community radio service) is amended as follows.

(2) In the subsection (3) added to that section—

- (a) after “provide a community radio service,” insert “or where OFCOM is considering a variation of such a licence under section 86(5) to include conditions set out in subsection (5),”;
- (b) in paragraph (a) after “in question” insert “(or, as the case may be, whether to vary the licence in question pursuant to section 86(5)),”;
- (c) in paragraph (b) after “it is granted” insert “(or, as the case may be, the terms of the variation of the licence in question pursuant to section 86(5)),”.

(3) In paragraph (b) of subsection (4) added to that section—

- (a) at the start of that paragraph insert “subject to paragraph (c)”; and
- (b) for “prohibiting—” to “included in that service;” substitute—
“ensuring that the relevant income for that community radio licence as is attributable to any arrangements for—
 - (i) the inclusion in that service of any remunerated advertisement, and
 - (ii) the sponsorship of any programmes included in that service,does not, in any financial year of the licence holder, exceed £15,000;”;

(4) For the subsection (4)(c) added to that section substitute—

- “(c) every licence to provide the services listed below must contain the conditions mentioned in subsection (5)—
 - (i) a community radio service that overlaps with any other local licence for a service, other than a community radio service, the potential audience of which includes no more than 150,000 persons who have attained the age of 15 years, where that local licence has at any time been varied pursuant to section 106(1A)(e)(c), or
 - (ii) a community radio service, other than a licence to provide a service such as falls within paragraph (b)”.

(5) For the subsection (5) added to that section substitute—

- “(5) Subject to subsection (6), the conditions referred to in subsection (4) are those that appear to OFCOM to be appropriate, in the case of the community radio licence in question, for—
 - (a) permitting the relevant income for that licence to include up to £15,000 per financial year of the licence holder 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; and
 - (b) ensuring that the amount of such of the relevant income for that licence as is attributable to any arrangements for—

(a) Sections 104AA, 104AB and 104AC were inserted into the Broadcasting Act 1990 (c.42) by sections 32(2) and 32(3) of the Digital Economy Act 2010 (c. 24).

(b) Paragraph 5(2) was amended by S.I. 2010/118. Article 3(2) of that SI also omitted subsection (2) which was added to section 105 as it applies to community radio.

(c) Section 106(1A) was inserted by the Communications Act 2003 section 312(1) and (3), and paragraph (e) of subsection (1A) was inserted by section 34(1) of the Digital Economy Act 2010.

(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,
does not, in any financial year of the licence holder, exceed 50% of the total relevant income (disregarding the £15,000 maximum specified in paragraph (a)) for that licence in that year.”

(6) After the subsection (5) added to that section insert—

“(5A) The Secretary of State may, from time to time, request OFCOM to review whether the £15,000 figure in subsections (4)(b) and (5) remains appropriate.”

(7) For subsection (6) added to that section substitute—

“(6) OFCOM may include conditions in a licence to provide community radio services falling within subsection (4)(c), which modify the percentage of the total relevant income referred to in subsection (5), if it appears necessary to secure the result that—

- (a) the inclusion in any community radio service of remunerated advertising; or
- (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).”

6. In paragraph 6(b)(iv) (which modifies section 106 of the Broadcasting Act 1990 as it has effect in relation to a community radio service) for the paragraph numbers “(e)” and “(f)”, substitute “(f)” and “(g)”.

7. In paragraph 6A(a) (which modifies section 106ZA of the Broadcasting Act 1990 as it has effect in relation to a community radio service) in the words to be substituted, for the words “(e) and (f)” substitute “(f) and (g)”.

8. In paragraph 10A(b) (which adds section 253A to the Communications Act 2003 as it has effect in relation to a community radio service)—

- (a) in subsection (1) of that added section, for “one extension” substitute “two extensions”;
- (b) in subsection (2) of that added section for “the end of the period” to the end of the sentence, substitute “the date the relevant licence would otherwise expire”.

Transitional provision

9. Section 253A(3)(b) of the Communications Act 2003 (Extension of community radio licences) shall not apply to any community radio licence which would otherwise expire within 8 months of the date on which this Order comes into force.

Name
Minister of State
Department for Culture, Media and Sport

Date _____ Department for Business, Innovation and Skills

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Community Radio Order 2004 (S.I. 2004/1944) to permit certain community radio stations to receive income from the taking of remunerated advertising or sponsorship of their programming output, to allow the holder of a local digital television licence to also hold a community radio licence, and to permit the holders of a community radio licence to extend their licence twice.

(a) Paragraph 6A was inserted by S.I. 2010/118.
(b) Paragraph 10A was inserted by S.I. 2010/118.

Article 2 amends article 6 of the 2004 Order to allow the holder of a local digital television programme service licence to also hold a community radio licence.

Articles 4 to 8 amend the Schedule to the 2004 Order which sets out modifications to the provisions in the Broadcasting Act 1990 and the Communications Act 2003 which are applicable to community radio licences.

Article 4 ensures additional provisions of the Broadcasting Act 1990 (relating to the extension of local licences) are disapplied in the case of community radio licences. Those sections were added by the Digital Economy Act 2010 and the provision made by paragraph 4 of the Schedule to the 2004 Order therefore requires amendment.

Article 5 amends the modifications to section 105 of the Broadcasting Act 1990. The amendments firstly require OFCOM to consider certain conditions when considering the variation of a licence as well as a grant. The amendments also permit a community radio licence which overlaps with a small commercial station to raise up to £15,000 per annum from remunerated advertising or sponsorship. A community radio licence which overlaps with a small commercial station which has had its licence amended to allow it to make programmes outside its broadcasting locality, or a community radio licence that does not overlap with a small commercial station may also raise up to £15,000 per annum from remunerated advertising or sponsorship, but may also raise up to 50% of its annual income above that £15,000 threshold from remunerated advertising or sponsorship. In addition, a community radio station which is not subject to restrictions may also raise up to 50% of its annual income above the £15,000 threshold from remunerated advertising or sponsorship. The amendments also allow the Secretary of State to ask OFCOM to undertake reviews to see whether the £15,000 figure remains appropriate. The amendments permit OFCOM to vary the 50% figure if that amount would prejudice unduly any nearby local commercial radio stations.

Articles 6 and 7 amend paragraph numbering in the modifications. Section 34 of the Digital Economy Act 2010 amended section 106 of the Broadcasting Act 1990 including inserting a new paragraph (e) into subsection (1A).

Article 8 amends the modification in paragraph 10A of the Schedule to the 2004 Order which inserts a new section 253A into the Communications Act 2003, to allow up to two extensions of a community radio licence.

Article 9 is a transitional provision. It disapplies the requirement to make an application for a licence extension six months before the licence would otherwise expire for licences which are due to expire within 8 months of the coming into force of the Order.

An impact assessment of the effect that this instrument will have on the costs to business and the voluntary sector is available from the website of the Department for Culture, Media and Sport (www.gov.uk/organisations/department-for-culture-media-sport). It is also annexed to the Explanatory Memorandum which is available at www.legislation.gov.uk

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