

2011 No. 1503

BROADCASTING

The Media Ownership (Radio and Cross-media) Order 2011

Made - - - - *14th June 2011*

Coming into force - - *15th June 2011*

The Secretary of State makes the following Order in exercise of the powers conferred by section 402(3) of, and paragraphs 6, 10, 11, 12 and 13 of Schedule 14 to, the Communications Act 2003(a) as extended by the Communications (Isle of Man) Order 2003(b).

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

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

Citation, commencement and extent

1. This Order may be cited as the Media Ownership (Radio and Cross-media) Order 2011 and comes into force on the day after the day on which it is made.

2. This Order extends to the Isle of Man, except for article 3 in so far as it relates to paragraph 8 of Schedule 14 to the Communications Act 2003, and articles 4, 9 and 16 to 18.

Amendment of Schedule 14 to the Communications Act 2003

3. In Schedule 14 to the Communications Act 2003 (media ownership rules) omit paragraph 1(2) and Part 2.

Amendment of the 2003 Order

4. In the Media Ownership (Local Radio and Appointed News Provider) Order 2003(d) omit Parts 2 and 3 (requirements applying to local sound broadcasting licences and local digital sound programme services).

(a) 2003 c.21.
(b) S.I. 2003/3198. Article 6 of, and Schedule 2 to, the Order extend, with modifications, Schedule 14 to the Communications Act 2003 to the Isle of Man. There are amendments to that Order not relevant to this Order.
(c) This Order gives effect to recommendations made by OFCOM in a report of a review under section 391 of the Communications Act 2003, dated 17 November 2009. Additionally, this Order makes provision for changes which go further than giving effect to those recommendations, as well as providing for the extension of certain of its provisions to the Isle of Man. Accordingly, the Secretary of State has consulted OFCOM.
(d) S.I. 2003/3299, amended by S.I. 2004/1944.

Consequential amendment of the Communications Act 2003

5. Schedule 14 to the Communications Act 2003 is amended as follows.
- 6.—(1) Paragraph 3 is amended as follows.
 - (2) Omit sub-paragraph (5).
 - (3) In sub-paragraph (6) for “sub-paragraphs (4) and (5)” substitute “sub-paragraph (4)”.
 - (4) In sub-paragraph (7) —
 - (a) for “sub-paragraphs (4) and (5)”, substitute “sub-paragraph (4)”;
 - (b) omit “, or in a particular area,”.
7. In paragraph 4 omit “national or local”.
8. Omit paragraph 5.
9. In paragraph 13(4) at the end add “or section 5(6AA) to (6AD) of the Broadcasting Act 1990”.

Consequential amendment of the Broadcasting Act 1990

10. The Broadcasting Act 1990(a) is amended as follows.
- 11.—(1) Section 5 (restrictions on holding of licences under Part 1) is amended as follows.
 - (2) In subsection (6A)(c) after “local market share” omit “(within the meaning of that Part of that Schedule)”.
 - (3) After subsection (6A) insert —

“(6AA) For the purposes of this section, the local market share of a local newspaper in any area at any time is the percentage of the total number of copies of all local newspapers sold in that area in the relevant six months which is represented by the total number of copies of that newspaper sold in that area in that six months.

(6AB) In subsection (6AA) “the relevant six months” means the six months ending with the last whole calendar month to end before the time in question.

(6AC) For the purposes of subsection (6AA), the number of copies of a newspaper sold in a particular area during any period may be taken to be such number as is estimated by OFCOM—

 - (a) in such manner, or
 - (b) by reference to such statistics prepared by any other person,

as they think fit.

(6AD) In relation to a newspaper which is distributed free of charge (rather than sold), references in this section to the number of copies sold include references to the number of copies distributed.”
 - (3) After subsection (6A) insert —

“(6AA) For the purposes of this section, the local market share of a local newspaper in any area at any time is the percentage of the total number of copies of all local newspapers sold in that area in the relevant six months which is represented by the total number of copies of that newspaper sold in that area in that six months.

(6AB) In subsection (6AA) “the relevant six months” means the six months ending with the last whole calendar month to end before the time in question.

(6AC) For the purposes of subsection (6AA), the number of copies of a newspaper sold in a particular area during any period may be taken to be such number as is estimated by OFCOM—

 - (a) in such manner, or
 - (b) by reference to such statistics prepared by any other person,

as they think fit.

(6AD) In relation to a newspaper which is distributed free of charge (rather than sold), references in this section to the number of copies sold include references to the number of copies distributed.”
12. In section 88 (restrictions on holding of licences under Part 3) in subsection (6A)(c) —
 - (a) for the words “that Part of that Schedule” in the first place where they occur substitute “section 5”;
 - (b) for those words in the second place where they occur substitute “Part 1 of Schedule 14 to the Communications Act 2003”.

(a) 1990 c.42. Sections 5 and 88 were amended by sections 73 and 136 of, and Schedules 2 (paragraphs 12 and 13) and 8 (paragraphs 2 and 6) to, the Broadcasting Act 1996 (c.55) and sections 350(2), 360(3) and 406(7) of, and Schedules 15 (paragraphs 3 and 35) and 19 to, the Communications Act 2003.

Consequential amendment of the Broadcasting Act 1996

13. The Broadcasting Act 1996(a) is amended as follows.
14. In section 5 (restrictions on holding of licences under Part 1) in subsection (7)(c) —
- (a) for the words “that Part of that Schedule” in the first place where they occur substitute “section 5 of the Broadcasting Act 1990”;
 - (b) for those words in the second place where they occur substitute “Part 1 of Schedule 14 to the Communications Act 2003”.
15. In section 44 (restrictions on holding of licences under Part 2) in subsection (7)(c) —
- (a) for the words “that Part of that Schedule” in the first place where they occur substitute “section 5 of the Broadcasting Act 1990”;
 - (b) for those words in the second place where they occur substitute “Part 1 of Schedule 14 to the Communications Act 2003”.

Consequential amendment of the 2003 Order

16. The Media Ownership (Local Radio and Appointed News Provider) Order 2003 is amended as follows.

17. In Part 1 (general provisions) omit —
- (a) in article 2(1) the definition of “the 1990 Act”;
 - (b) articles 2(2), 2A and 3.

18. Omit article 14 (restriction on holding of local radio multiplex licence: meaning of “potential audience”).

Consequential amendment of the Isle of Man Order

19. In Schedule 2 to the Communications (Isle of Man) Order 2003 omit paragraph 70(c) and (d).

14th June 2011

Ed Vaizey
Parliamentary Under Secretary of State
Department for Culture, Media and Sport

(a) 1996 c.55. Sections 5 and 44 were amended by sections 350(2), 360(3) and 406(7) of, and Schedules 15 (paragraphs 78 and 104) and 19 to, the Communications Act 2003.

EXPLANATORY NOTE

(This note is not part of the Order)

This order is made under section 402 of, and Schedule 14 to, the Communications Act 2003 (“the Schedule”). It makes changes to the framework of restrictions on media ownership, by amending the Schedule and an earlier Order made under these same provisions, the Media Ownership (Local Radio and Appointed News Provider) Order 2003 (S.I. 2003/3299) (“the 2003 Order”). In respect of all but one of these changes, the changes give effect to recommendations made by Ofcom in its report of a review of the media ownership framework conducted in pursuance of its duty under section 391 of the Communications Act 2003, dated 17 November 2009. The remaining change, the revocation of article 9 of the 2003 Order, is made following consultation with Ofcom as required by paragraph 17(1) of the Schedule. As is also required by paragraph 17(1) of the Schedule, Ofcom has been consulted regarding the extension of a number of the provisions of this Order to the Isle of Man.

Article 3 of this Order repeals paragraph 1(2) and Part 2 (paragraphs 7 to 10) of the Schedule. The following restrictions are thereby removed: the restriction at paragraph 1(2) of the Schedule (prohibition on a person holding a licence to provide a regional Channel 3 service where that person also runs a local newspaper (or local newspapers) with a local market share of 20 per cent or more in the coverage area of the service); the restriction at paragraph 7 of the Schedule (restriction on holding more than one national radio multiplex licence); the restriction at paragraph 8 of the Schedule (restriction on holding more than one local radio multiplex licence in the circumstances described in that paragraph). The definition at paragraph 9 of the Schedule (connected persons rules etc) and the Secretary of State’s power to repeal or otherwise modify any of the restrictions in Part 2 (at paragraph 10 of the Schedule) are no longer required due to the removal of the restrictions at paragraphs 7 and 8 of the Schedule, and are consequently removed.

Article 4 of this Order revokes Part 2 and Part 3 of the 2003 Order. Part 2 (articles 4 to 9) of the 2003 Order contains limits on the number of local sound broadcasting (analogue radio) licences that a person may hold in the circumstances described there. Article 4 of this Order removes all of those limits by revoking Part 2 of the 2003 Order in its entirety.

Part 3 (articles 10 to 12) of the 2003 Order contains limits on the number of local digital sound programme services that a person may provide. Article 4 of this Order removes all of those limits by revoking Part 3 of the 2003 Order in its entirety.

In consequence of the changes made by articles 3 and 4 of this Order, amendments are needed to the Schedule, the Broadcasting Act 1990, the Broadcasting Act 1996, the 2003 Order and the Communications (Isle of Man) Order 2003.

Articles 5 to 9 of this Order make consequential amendments to the Schedule as follows.

In paragraph 3 (national and local newspapers and their respective national and local market shares) the definition of “local market share” in paragraph 3(5) is no longer needed there and is repealed. Related provisions about the calculation of “market share” in paragraph 3(6) and 3(7) are amended in consequence of this, such that they will concern only the calculation of national market share.

Paragraph 4 (construction of references to running a newspaper) is amended so that it no longer contains reference to a “local newspaper”.

Paragraph 5 (coverage area for a Channel 3 service) gives a definition of the coverage area for a Channel 3 service on which the restriction at paragraph 1(2) of the Schedule relies. The definition is not used anywhere else in the Schedule and is therefore no longer necessary. Paragraph 5 is therefore repealed.

Wording is added to paragraph 13(4) of the Schedule to reflect the changes made to the Broadcasting Act 1990 set out below.

Articles 10 to 12 of this Order make consequential amendments to the Broadcasting Act 1990. In section 5 of that Act (restrictions on holding of licences under Part 1), section 5(6A), which relies on the definition of “local market share” at paragraph 3 of the Schedule, is amended to reflect that this definition is no longer to be found there. Also at section 5, new subsections (6AA) to (6AD) insert the provisions relating to the calculation of local market share which have been removed from paragraph 3 of the Schedule. While those provisions were no longer necessary as far as the Schedule was concerned, they remain necessary in order to enable Ofcom to make a calculation of “local market share”. Re-inserting the provisions here ensures that this is possible. Section 88 of that Act (restrictions on holding of licences under Part 3) is also amended to reflect this change.

Articles 13 to 15 of this Order make consequential amendments to the Broadcasting Act 1996. Sections 5 (restrictions on holding of licences under Part 1) and 44 (restrictions on holding of licences under Part 2) of that Act are amended to reflect that the provisions to be relied on in relation to the definition and calculation of local market share are now to be found at section 5 of the Broadcasting Act 1990.

Articles 16 to 18 of this Order make consequential amendments to the 2003 Order by removing provisions which are redundant as a consequence of the substantive amendments made by article 4.

Article 2 of this Order extends certain of the provisions of this Order to the Isle of Man, such that the following will have effect there: article 3 of this Order (the repeal of paragraph 1(2) and Part 2 of the Schedule, except as far as that repeal relates to paragraph 8 of the Schedule); the consequential amendment of paragraphs 3, 4 and 5 of the Schedule (at articles 5 to 8 of this Order); the consequential amendment of sections 5 and 88 of the Broadcasting Act 1990 (at articles 10 to 12 of this Order); and the consequential amendment of sections 5 and 44 of the Broadcasting Act 1996 (at articles 13 to 15 of this Order). As far as those repeals and consequential amendments relate to the Communications Act 2003, further consequential amendments are needed to the Order in Council which extended the Schedule to the Isle of Man, and article 19 of this Order revokes paragraph 70(c) and (d) of Schedule 2 to the Communications (Isle of Man) Order 2003 accordingly.

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STATUTORY INSTRUMENTS

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