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## EXPLANATORY NOTE

*(This note is not part of the Order)*

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

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 (article 3(1)(a)) 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.

Also, 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 the provider of the service is accountable for its provision to the community or communities it is intended to serve (article 3(5)).

Article 6 places an ownership restriction on the holding of community radio licences, such that a body corporate may hold only one such licence.

The Schedule to the Order, 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) 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.

Paragraph 3 modifies 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. Paragraph 3(a), (b)(i) and (ii) and (f)(ii) makes modifications to reflect the fact that community radio services will be provided to serve specified communities rather than particular areas. Paragraph 3(b)(iii) and (c) adds to the list of matters that an application for a community radio licence must address. Paragraph 3(d)(i) and (ii) modifies the requirements relating to the information that OFCOM may require from the applicant.

Paragraph 4 states that section 104B of the 1990 Act, which provides for a special application procedure for some local radio licence applications, does not have effect in relation to community radio services.

Paragraph 5 modifies section 105 of the 1990 Act, which sets out special requirements relating to the grant of local licences. Paragraph 5(1)(a) to (c) makes modifications reflecting those made by paragraph 3(a), (b)(i) and (ii) and (f)(ii). The modifications also reflect the characteristics of a community radio service set out in article 3 (paragraph 5(1)(d)). Paragraph 5(2) inserts new subsections (2) to (6) into section 105. New subsections (2) to (5) impose requirements to ensure

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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 income that any holder of a community radio licence may receive in respect of advertisements or sponsorship. Subsection (6) provides that the restrictions established by subsections (2) to (5) do not apply to sponsorship that is made available for purposes that are mainly philanthropic in nature.

Paragraph 6 modifies 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 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) inserts provision to secure that other broadcasters are not able to exercise an undue influence over the nature and content of community radio services, whilst paragraph 6(d) enables OFCOM to impose licence conditions to ensure that community radio licence holders provide the service that was proposed in the licence application.

Paragraph 7 modifies section 106ZA of the 1990 Act in consequence of the additional provisions inserted into section 106(1A) of the 1990 Act by paragraph 6(b)(iv).

Paragraph 8 modifies section 126 of the 1990 Act, which supplies various definitions for the purposes of Part 3 of that Act.

Paragraph 9 modifies Part 2 of Schedule 2 to the 1990 Act, which makes provision relating to restrictions on the holding of licences. In particular, paragraph 9(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 9(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. In addition to the modifications made by paragraph 9, article 5 lists a number of additional persons who for the purposes of community radio licences should be considered to appear on the list of disqualified persons at Part 2 of Schedule 2.

Paragraph 11 makes a consequential modification to section 245 of the 2003 Act (which, amongst other things, defines certain kinds of radio service).

Paragraph 12 provides that section 253 of the 2003 Act (provisions about the extension and modification of existing local radio licences) does not have effect, and inserts a new section 253A which sets out the circumstances in which a person who holds a community radio licence may apply to OFCOM for an extension of that licence, as well as setting out the process by which such applications must be made.

Paragraph 13 disapplies sections 314, 355 and 356 of the 2003 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).