

THE LEGISLATIVE REFORM (RENEWAL OF RADIO LICENCES) ORDER 2020

EXPLANATORY DOCUMENT BY THE DEPARTMENT FOR DIGITAL, CULTURE, MEDIA AND SPORT

1. Introduction

- 1.1. This explanatory document is laid before Parliament in accordance with section 14 of the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”) together with the draft of the Legislative Reform (Renewal of Radio Licences) Order 2020 (“the draft Order”), which we propose to make under section 1 of that Act.
- 1.2. The purpose of the draft Order is to amend sections 103B, 104A and 104AA of the Broadcasting Act 1990 to allow analogue commercial radio licences which are due to expire from 2022 to be renewed for a further ten year period on the condition that the licensee also provides a service on an appropriate digital radio multiplex (the means by which digital radio services (i.e. radio stations) are broadcast - a radio multiplex consists of a number of stations bundled together to be transmitted digitally on a single frequency in a given geographic area).
- 1.3. The Government is satisfied that requirements of the 2006 Act have been met. This includes that the provision made by the draft Order serves a purpose under section 1(2) (to remove or reduce burdens), that the relevant preconditions under section 3 are satisfied, and that the appropriate consultation has been carried out in accordance with section 13(1).
- 1.4. This explanatory document contains information for the Delegated Powers and Regulatory Reform Committee and the Regulatory Reform Committee.

2. Background to the Order

- 2.1. Analogue (FM or AM) commercial radio licences are issued by Ofcom under powers granted to them by section 86 of the Broadcasting Act 1990. Such a licence permits a commercial radio station to broadcast to a specific licensed geographic area (known as the measured coverage area) in accordance with a specified format (e.g. mainly speech-related requirements, such as news) for a set period of time.
- 2.2. Since the mid 1990s, the analogue licences of stations that also provide a service in digital form (in practice, either via digital audio broadcasting (DAB) or its successor technology, DAB+) have benefited from an entitlement to claim a series of renewals, in accordance with amendments made to the Broadcasting Act 1990 by the Broadcasting Act 1996, the Communications Act 2003, the Digital Economy Act 2010 and the Legislative Reform (Further Renewal of Radio Licences) Order 2015.

- 2.3. These amendments have been made, and the rights to renewals granted, on the basis that this would provide a clear incentive for those stations to invest in digital, which would in turn progress the market towards a future digital switchover in the longer term. This incentive played an important role in supporting the development of digital radio services given that the costs of broadcasting over digital exceeded the new revenues derived in the early and formative years of digital radio. This approach has had significant success, with digital radio now accounting for close to 60% of all radio listening (up from less than 25% in 2010).
- 2.4. In February 2020, the Government announced terms of reference for a review of digital radio. The review, which will report to the Government by March 2021, will examine future trends and consider how radio should adapt to the growing challenges and opportunities from the latest audio technologies, as well as the impact of new consumer behaviours such as streaming. Its terms of reference, as agreed with industry partners, focus on how to ensure that radio remains fit for the future, assessing potential future listener trends and making recommendations to strengthen the UK radio and audio industry and promote innovation.
- 2.5. Among the areas the review will consider is the longevity of analogue broadcasting transmission, whether there should be a radio switchover and if so the timing of such a transition. As a future digital switchover is likely to be some years away, we need to consider the specific issue of time-limited analogue radio licences, which will start to expire within two years.
- 2.6. Over the coming decade, a number of established radio stations will reach the final expiry of their analogue licences, having used up all of the renewals which are available under the current legislation. This includes the three national licences - for Classic FM, and the AM licences for Absolute Radio and TalkSport - as well as around 100 local licences.
- 2.7. At the moment, Ofcom has no powers to renew these licences further, and would be obliged to re-advertise them on expiry were this Order not to be made. If the licences were to be re-advertised, this would mean that both the incumbent stations and potential new entrants would need to incur the significant costs associated with working up a new licence application.
- 2.8. The Government consulted on the following options:
 - Option 1: Do nothing - not to legislate, but instead to allow licences to expire and be re-advertised by Ofcom in accordance with the existing legislation;
 - Option 2: Allow the renewal of licences for a further five year period for licences renewed under s103B and s104AA of the 1990 Broadcasting Act, with appropriate provisions for any stations that have not yet had licences renewed under s103B or s104AA;

- Option 3: Allow the renewal of licences for a further eight year period for licences renewed under s103B and s104AA of the 1990 Broadcasting Act, with appropriate provisions for any stations that have not yet had licences renewed under s103B or s104AA;

- 2.9. We also sought views on the option of smaller analogue commercial stations providing an accompanying digital service on a new small-scale DAB multiplex (as provided for by the Small-scale Radio Multiplex and Community Digital Radio Order 2019). Currently, radio multiplex licences are awarded either for national (UK-wide) or local (generally county-sized) coverage; a small-scale multiplex service would enable stations to broadcast to geographic areas smaller than those covered by existing local radio multiplexes.
- 2.10. There are some arguments in favour of re-advertising licences in an open competition, and these were explored in the course of our consultation. In particular, it was argued that there remains a significant audience on analogue for new commercial stations to target.
- 2.11. However, the vast majority of consultation respondents were in favour of a further renewal of licences, given the significant cost and uncertainty for the industry that would be involved in re-advertising. There was no expressed public desire for licences to be re-advertised, and in any event, there remain sufficient routes to market for new entrants - including by acquisition of one of the existing analogue licences or the creation of a digital station, given the increased availability of DAB capacity with the launch of the second national multiplex in 2016 and the expansion of local DAB coverage.
- 2.12. Our assessment, which reflects the views of respondents, is that the value of an analogue licence is likely to be relatively low and to diminish further as digital listening grows.
- 2.13. In terms of the length of time for which licences should be renewed, the feedback from industry suggested that at least eight years would be reasonable in order to create greater certainty and encourage further investment in digital. Strong arguments were made for a slightly longer period to cover the expected lifespan of analogue radio broadcasting to the early 2030s - when more than 80% of all radio listening is likely to be via digital even if left entirely to market trends.
- 2.14. There was also industry support for the principle of stations taking digital carriage (i.e. providing their digital service) on small-scale DAB, although it was highlighted that digital already forms a core part of many stations' business in any event.
- 2.15. Following the initial consultation period, in light of the consultation responses and the difficulties presented to the sector by Covid-19, we sought the views of key stakeholders and Ofcom on two additional proposals:

- To remove the requirement for stations to provide a service on digital as a condition of any future analogue renewal (“the digital requirement”);
 - To allow all analogue licences to be renewed for a further ten years, in addition to any renewals to which stations may already be entitled.
- 2.16. The response to the proposal to remove the digital requirement was mixed. Although some respondents saw this as a significant simplification, organisations representing local multiplex operators were less convinced, while Radiocentre thought that more time was needed to consider the wider implications, and suggested that this be looked at as part of future longer-term plans for radio deregulation.
- 2.17. As regards the proposal to increase the renewal period to ten years, the feedback was positive, with respondents arguing that this would remove all long-term issues over licensing (and the resultant impact on financing), encourage further investment in DAB, and provide a stronger basis to continue to innovate and invest in new content.
- 2.18. The Government therefore proposes to make the draft Order using the power contained in section 1 of the 2006 Act.
- 2.19. The draft Order:
- amends section 103B to allow for the further renewal of national licences on a third occasion for a period of not more than 10 years;
 - amends section 104AA to allow, in relation to local licences previously renewed under section 104A, for the further renewal of licences on a third occasion for a period of not more than 10 years;
 - amends section 104AA to allow, in relation to local licences granted on or after 8 April 2010 (the date section 104AA was inserted into the 1990 Act), for the further renewal of the licence on a second and third occasion for periods of not more than five and 10 years;
 - amends section 104A to allow the nomination of a small-scale radio multiplex service in relation to renewals under that section and section 104AA.
- 2.20. The draft Order also amends sections 103B and 104AA to provide that Ofcom may determine a ‘relevant date’ for the purposes of those sections which is less than one year from the date of the determination. These provisions only apply to renewals made on a third occasion. The relevant date will be a date which is not more than 15 months after the draft Order comes into force and where the determination is made as soon as practicable after that date. These amendments allow Ofcom to carry out an effective renewal process in relation to licences that expire in early 2022. In particular, they will allow Ofcom to determine a relevant date in March 2021 for licences that expire in February and March 2022.

- 2.21. Section 1 permits a Minister to make any provision which would serve the purpose of removing or reducing “any burden or the overall burdens, resulting directly or indirectly for any person from any legislation”. The burdens identified - which have been quantified through a de minimis impact assessment - are the administrative inconvenience and financial cost to current licensees in having to bid for new licences following the expiry of the licences that they currently hold; and, when applying for renewals of local licences, being limited to nominating a local radio multiplex radio service (or making a national nomination). In addition, there would be significant burdens for Ofcom, the regulator, which would have to run the bidding process for around 100 licences over the course of the next decade.
- 2.22. The draft Order makes provision to allow for the further renewal of both national and local commercial radio licences, thus avoiding the need for a competition for new licences. This provision will significantly reduce the likely financial costs for the affected licensees of having to re-compete for their licences. We anticipate that this measure will bring an annual net direct benefit to business of approximately £0.7m over the next 10 years.
- 2.23. The provisions in the draft Order will also avoid placing a significant administrative burden on the regulator, Ofcom. They would otherwise be required to conduct a competitive relicensing process for the three national and approximately 100 local licences, which has not been conducted on a similar scale since the 1990s, and which Ofcom is unlikely to be sufficiently resourced to undertake at present.
- 2.24. We acknowledge that stations (and Ofcom) will need to incur some costs in applying for and processing renewals, but these costs will be significantly lower than the cost of re-advertising licences - indeed the cost is likely to be negligible.
- 2.25. The draft Order also makes provision to allow applicants for renewals to nominate a small-scale radio multiplex service to broadcast their nominated digital service. Currently, applicants can only nominate a local radio multiplex service (or make a national nomination). This provision is likely to allow applicants to reduce their financial costs, as carriage on a small-scale radio multiplex is likely to cost less than carriage on a local (or national) multiplex.

3. Explanation why the conditions in section 3(2) of the 2006 Act are satisfied

The policy objective intended to be secured by the provision could not be satisfactorily secured by non-legislative means

- 3.1. Sections 103B and 104AA of the 1990 Act permit Ofcom to renew national licences and local licences previously renewed under section 104A on two occasions for up to seven and five years. Local licences granted on or after 8

April 2010 can be renewed on one occasion for up to seven years. Section 104A of the 1990 Act only allows the applicant for a renewal to nominate a local radio multiplex service.

- 3.2. Ofcom, as a statutory body, can only act in accordance with their statutory powers. They cannot renew licences further than they are permitted by these provisions, and nor can they accept a nomination of a small-scale radio multiplex service. Therefore, there is no non-legislative solution by which the intended outcome could be achieved - legislation is required to amend the 1990 Act to confer on Ofcom the power to further renew licences and to allow applicants to nominate a small-scale radio multiplex service.

The effect of the provision is proportionate to the policy objective

- 3.3. The policy objective is to provide analogue commercial radio stations which also broadcast over digital with the stability and certainty to allow them to continue to invest in the progression of the industry towards a digital future. In particular, providing this stability and certainty would support commercial radio as it continues to face the tri-fold challenges of the transition from analogue to digital, the growth in new forms of online audio content and the sector's continuing dependence on advertising.
- 3.4. The Government believes that this policy objective is best achieved by allowing commercial radio stations to renew their analogue radio licences as provided for in the draft Order and to provide applicants with greater flexibility in determining how they can continue to commit to digital radio by allowing them to nominate a small-scale radio multiplex (in addition to a local multiplex).
- 3.5. These changes would provide clarity to commercial radio stations (including their investors and advertisers), and reduce their costs at a time of great uncertainty within the industry.
- 3.6. During the initial consultation process, we considered a number of options for the maximum length of the renewal. The strong preference among respondents was for eight years as a minimum, if not longer. As a result, we carried out a supplementary consultation on a ten year renewal. The clear view of respondents was that ten years would remove all long-term issues over licensing (and the resultant impact on financing), encourage further investment in DAB, and provide a stronger basis to continue to innovate and invest in new content.
- 3.7. In the course of our initial consultation, we also sought views on whether applicants for licence renewal should be able to nominate a new small-scale DAB multiplex (as provided for by the Small-scale Radio Multiplex and Community Digital Radio Order 2019) - a cheaper option than existing local multiplexes, and offering coverage levels which many such stations may find

more appropriate given their intended audience. There was strong support for this proposal.

- 3.8. In light of the responses received and the additional challenges presented to the industry by the coronavirus pandemic, the supplementary consultation also sought views on the option of going further, and removing the requirement for renewing stations to take digital carriage.
- 3.9. The feedback on removal of this requirement was mixed. Although some respondents saw this as a significant simplification, organisations representing local multiplex operators were less convinced, while Radiocentre thought that more time was needed to consider the wider implications, and suggested that this be looked at as part of future longer-term plans for radio deregulation.
- 3.10. Having taken full account of the consultation responses, we believe a further renewal period of ten years and allowing for the nomination of a small-scale radio multiplex (while retaining the digital carriage requirement) is the most proportionate response to meeting our policy objective. It provides the stability and certainty that a shorter renewal would not, while reflecting the likelihood that ten more years of analogue broadcasting will take the industry towards a natural endpoint for the medium (noting that section 97A of the Broadcasting Act 1990 already gives Ministers the power to require Ofcom to shorten licences to facilitate a future radio switchover with a minimum of two years' notice).

The provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it:

- 3.11. We believe that allowing the further renewal of analogue licences for stations that also broadcast in digital is in the public interest. It will enable licensees to continue to invest in new content and services for their listeners, as well as committing further resources towards their digital radio offers - underlining the Government's continued commitment to a listener-led transition to digital radio.
- 3.12. Renewal is also in the interests of listeners, who will benefit from the continued growth in, and accessibility of, digital radio services, which have been able to provide a much greater variety of content to the listener, as the medium allows for the transmission of a much larger number of stations, and information such as playlists, programme content and more.
- 3.13. By contrast, we consider that re-advertising licences, particularly given the number of licenses that would need to be readvertised, is likely to be detrimental to both licensees and listeners, by diverting investment and management time from programming and digital service development to the application process. As one consultation respondent said: "We do not believe

there are overarching programming benefits that would offset the cost and impact of rebidding for licences.”

- 3.14. In addition, there is a risk that re-advertising could result in a reduction in the number of stations available to listeners, as some incumbents might not want to take on the costs of re-applying, and there might be no other prospective bidders for their licence.
- 3.15. Re-advertising would also result in uncertainty for listeners as to whether their favourite stations would continue, with a risk that some long-standing stations might go off air. The Government believes that it is in the public interest to avoid significant market or output disruption to the radio industry and listeners given the challenges facing commercial radio including the need to maintain services on analogue and digital platforms.
- 3.16. The only group potentially adversely affected by the draft Order are prospective new entrants who might be interested in applying for expiring analogue licences - particularly national licences or those in attractive city markets - who would in effect be prevented from acquiring such a licence through a competitive process. Some respondents to the consultation drew attention to the significant audience for analogue stations, in particular the three national analogue services. It was also argued that a potential new entrant may already have built up its business on digital and / or online, and so would find it significantly less challenging to develop a national brand than would have been the case in previous years.
- 3.17. With regard to new entrants and national licences, we acknowledge that there remains some economic value to these, which could be reflected in a new cash bid process. Against this, however, the difficulties that the industry is facing due to the impacts of the Covid-19 coronavirus pandemic suggest that new local radio licence holders are likely to struggle to cover start-up costs and reach profitability in the period between the availability of licences (largely 2023 and later) and the likely natural endpoint for analogue listening (on current trends) towards the end of the decade.
- 3.18. We also note that when Ofcom has carried out its assessments as to the appropriate fee for holding a national licence, it has reached similar conclusions - namely that these licences hold a relatively low value. Specifically, when Ofcom assessed the annual national licence fees in 2010 and 2017 - albeit against the backdrop of different levels of digital penetration, and therefore different assumptions about barriers to entry and audience levels - they concluded on [both occasions](#) that the value of holding these licences was not significant, and that these fees should be set at a nominal level to reflect that the economic value to a new entrant of holding these licences would be minimal.
- 3.19. We accept that the draft Order will remove one option for potential new entrants to the radio market. However, there are a number of alternative

routes to an audience, including digital and / or online broadcasting, while it is also potentially open to new entrants to acquire licenses from existing licence holders. As such, we consider that the benefits of re-advertising are small and outweighed by the costs of a cross-industry process to the wider sector and to listeners.

- 3.20. The Government therefore believes that the provisions in the draft Order strike a fair balance between the public interest and the interests of any person adversely affected by them.

The provision does not remove any necessary protection

- 3.21. The provisions amended by the draft Order do not contain any necessary protections either for the industry or the public and therefore no protections are removed. Services provided under the licences renewed under these provisions must still comply with all other rules including compliance with Ofcom's Broadcasting Code covering standards in programmes, sponsorship, product placement in television programmes, fairness and privacy.

The provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise

- 3.22. The provisions amended by the draft Order does not confer any rights or freedoms, either for the industry or the public, and therefore the draft Order does not prevent any person from continuing to exercise any right or freedom.

The provision is not of constitutional significance

- 3.23. The provision is not of constitutional significance. The draft Order amends the regulatory framework for the licensing of analogue radio stations which is not a matter of constitutional significance.

4. Other Ministerial duties under the 2006 Act

Consultation Summary

- 4.1. A consultation was carried out between 23 December 2019 and 21 February 2020, with an additional seminar with representatives from the industry being held on 26 February 2020. A further consultation was carried out between 7 May and 18 May 2020, to seek views on two additional proposals. Further information about these consultations, including the responses, is set out above, and the full text of the Government's response is set out at Annex A.

Parliamentary Procedure

- 4.2. The Minister of State for Media and Data, John Whittingdale MP, recommends that the affirmative resolution procedure should apply in relation to the making of the draft Order.

- 4.3. The draft Order makes relatively small and straightforward changes to the existing regulatory framework. However, the provision to be made by the draft Order will amend primary legislation and we therefore consider that the affirmative resolution procedure is the most appropriate procedure to ensure proper Parliamentary scrutiny.

European Convention on Human Rights

- 4.4. The Minister of State for Media and Data, John Whittingdale MP, has made the following statement regarding Human Rights: “In my view the provisions of the Legislative Reform (Renewal of Radio Licences) Order 2020 are compatible with the Convention rights.”

Territorial Extent and Territorial Application

- 4.5. Broadcasting is a reserved matter. The Broadcasting Act 1990, and the amendments made by the draft Order, apply to the whole of the United Kingdom.

5. Impact

- 5.1. The estimated financial impact on businesses is below £5m a year. As such, a full Impact Assessment has not been published alongside this Explanatory Document. Instead, an internal De Minimis Assessment was conducted and found that there was a small annual net direct benefit to business of approximately £0.7m over the next 10 years.
- 5.2. There is no impact on charities, voluntary bodies or the public sector. The changes do not, for example, impact on community radio stations licensed by Ofcom.

6. Contact

- 6.1. Harry Reardon at the Department for Digital, Culture, Media and Sport can answer any queries regarding this instrument. Telephone: 020 7211 2016 or email: harry.reardon@dcms.gov.uk.

Annex A: Consultation Response



Department for
Digital, Culture,
Media & Sport

Further Renewal of Analogue Commercial Radio Licences

Consultation Response

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Introduction

1. The government has [consulted](#) on whether to amend current legislation (by means of a Legislative Reform Order (LRO)) to allow Ofcom to renew analogue commercial radio licences that are approaching final expiry.
2. Digital radio has seen significant growth since the launch of the Digital Radio Action Plan in 2010. As a result of improvements in national and local digital radio coverage, together with investment by broadcasters in new digital services and by vehicle manufacturers in fitting digital radios as standard in new cars (94.6% as of Q4 2019), digital methods now account for 58.5% of all radio listening (RAJAR Q4 2019), up from just 24% in 2010.
3. A little over 40% of UK radio listening is still to FM and AM stations, and so analogue radio will remain an important platform for listeners for the next few years. However, current trends suggest that analogue could account for just 10% or less of listening by the end of the decade.
4. The current legislation allows commercial radio stations holding analogue licences a series of time-limited renewals, provided that they also provide a service on DAB digital radio. However, the three national commercial licences (for Absolute, Classic FM and TalkSport), as well as a number of local licences, are approaching the date of their final expiry in early 2022. Ofcom does not currently have powers to renew these licences for a further period, and so stations wishing to continue broadcasting would need to reapply for their licences and potentially compete against other prospective operators, including new entrants, to secure a new licence.
5. Our formal consultation ran from 23 December 2019 to 21 February 2020, with two stakeholder seminars held on 11 February and 26 February 2020. All commercial radio broadcasters were invited, as were DAB multiplex operators. Details of the seminars, including notes, are appended to this response at Annex A.
6. We sought views on whether the government should make provision to allow analogue commercial radio licences to be renewed for a further period, and if so, what the length of this period should be. Specifically, we requested views on the following [three options](#):

Option 1 - Do nothing: Not to legislate, but instead to allow licences to expire and be re-advertised by Ofcom in accordance with current legislation;

Option 2 - Allow the renewal of licences for a further five year period for licences renewed under s103B and s104AA of the Broadcasting Act 1990, with appropriate provisions for any stations that have not yet had licences renewed under s103B or s104AA;

Option 3 - Allow the renewal of licences for a further eight year period for licences renewed under s103B and s104AA of the Broadcasting Act 1990, with appropriate provisions for any stations that have not yet had licences renewed under s103B or s104AA.

7. We also sought views on the option of smaller analogue commercial stations providing an accompanying digital service on a new small-scale DAB multiplex (as provided for by the Small-scale Radio Multiplex and Community Digital Radio Order 2019).
8. Since the conclusion of this initial consultation period, commercial radio has experienced a significant and rapid reduction in revenues as the result of the economic impacts of the coronavirus pandemic. According to Radiocentre¹, overall commercial radio sector revenues are projected to be down by around 50% in Quarter 2 (April-June) 2020 due to the withdrawal of advertising revenues, particularly from leisure, tourism and car retail sectors. A large number of smaller commercial stations are particularly exposed and some are at risk of having to close as a result of the economic impacts.
9. In addition to the wider economic support available, the government has brokered sector-specific support for commercial radio. Discussions with Arqiva have resulted in a package of assistance on transmission costs with six months free transmission for Arqiva's small station customers, Ofcom has relaxed its enforcement of licensees' programming and production requirements, and both PPL and PRS have reduced charges to stations to reflect the drop in revenues. However, the longer-term impacts of the coronavirus pandemic on the sector are not known, and depend to a large extent on its ability to rebuild advertising revenues once the impacts of Covid-19 start to lessen.
10. Given the depth of the impact of Covid-19 on revenues, it is more important than ever that commercial radio stations have greater clarity and certainty on licence durations - particularly given Ofcom's decision, in light of the pandemic, [to delay the award of new small-scale multiplex licences](#), which will have a knock-on effect on the roll-out of small-scale DAB as a lower-cost transmission option for smaller stations.
11. In light of the difficulties presented to the sector by Covid-19, following the initial consultation period, we sought the views of key stakeholders and Ofcom on the following additional proposals:
 - a. **To remove the requirement for stations to provide a service on digital as a condition of any future analogue renewal ("the digital requirement"),**

¹ Radiocentre is the industry representative body for UK commercial radio stations.

including those renewals to which a station is already entitled under the existing legislation;

- b. **To allow all analogue licences to be renewed for a further ten years**, in addition to any renewals to which stations may already be entitled.

12. The response to the first proposal, to remove the digital requirement for all renewals, was mixed. Although some respondents saw this as a significant simplification in legislation which would reduce regulatory burdens, organisations representing local multiplex operators were less convinced. Radiocentre thought that more time was needed to consider the wider implications, and suggested that this be looked at as part of longer-term plans for radio deregulation.
13. As regards the proposal to increase the renewal period to ten years, the feedback was more positive, with respondents arguing that this would remove all long-term issues over licensing (and the resultant impact on financing), encourage further investment in DAB, and provide a stronger basis to continue to innovate and invest in new content.
14. Given the strong support expressed for a longer renewal period, the lukewarm response to the proposal to remove the digital requirement, and the broad view that any digital condition for renewal should be satisfied if a station takes carriage on a small-scale multiplex (once these are available), the government therefore proposes, within our Legislative Reform Order, to allow a further extension of all analogue licences for ten years on the basis that the licensee also provides a digital (national, local or small-scale) service.

Summary of responses received

15. A total of 45 radio stations / groups, industry bodies and individuals provided written responses to our consultation. A full list of organisations which responded can be found at Annex B, and the responses provided by these organisations have been published on our [consultation page](#). We are grateful for all responses provided.
16. In addition to these written responses, we received significant oral feedback from a total of 28 delegates across the two seminars that we held in the course of the consultation.

Feedback - Option 1

17. While a significant majority of respondents did not support this option, there were three respondents (one of which was a radio station) that put forward arguments in favour of allowing licences to expire and for the expiring licences to be readvertised by Ofcom and awarded after a competition.
18. Specifically, respondents argued that:
 - a. There remains a significant audience for analogue stations, particularly the three national ones (one respondent stated: *“The analogue platform offers licensees potential access to a large established audience, and therefore, there would be no end of media owners who would want to apply and compete for coverage”*);
 - b. As such, were the national analogue licences to be readvertised, there would be interest within the industry in bidding for them;
 - c. A potential new entrant may already have built up its business on digital and / or online, and so would find it significantly less challenging to develop a national brand than would have been the case in previous years;
 - d. Alternatively, a new entrant could use its analogue licence to grow a brand and develop an audience on analogue ahead of any future digital switchover;
 - e. Even if reAdvertising did not result in new entrants, it could provide an opportunity to seek stronger commitments to digital content, improved programming, and / or an increased commitment to localness (in the words of one respondent, *“the analogue licences are a premium due to the rarity of the spectrum. The market should be tested to see if incumbents could be bettered”*);

- f. Were a new station to win a licence, the previous licence holder could continue to broadcast over digital, and the overall effect would be increased choice for the listener.

Feedback - Options 2 and 3, and additional proposal (b)

19. The general view expressed by those members of the public who responded to our consultation was one of satisfaction with their current analogue services, and there was no expressed desire on the part of those respondents for licence readvertisement. Indeed, one respondent said that *“putting the licences out for tender as in option 1 would be wasteful in both time and money.”*
20. The majority view from industry respondents was strongly supportive of renewal. In support of the options that involved this, respondents argued that:
 - a. Taking steps to readvertise would involve significant costs and resourcing being diverted from programming and digital service development to the application process - as one respondent put it, *“we do not believe there are overarching programming benefits that would offset the cost and impact of rebidding for licences”*;
 - b. Renewing analogue licences would not prevent new stations from launching, given that they could do so via digital (including small-scale DAB) or online;
 - c. Any potential new licensee, particularly at the national level, would need to have significant financial, commercial and operational backing, beyond the initial costs of the licence application;
 - d. Readvertising all licences might result in some smaller areas attracting no applicants at all;
 - e. Readvertising licences would not in itself increase the number of services available to the listener;
 - f. If licences were readvertised but a given existing licensee was not challenged, that licensee might take the opportunity to seek the removal of or a reduction in the commitments in their format;
 - g. Readvertising licences would mean that listeners risk losing access to familiar and well-loved stations (as one respondent said: *“It is clear that diversion of investment and management time into relicensing could undermine the financial viability of existing radio stations”*);

- h. Renewal of licences would provide reassurance to smaller stations that they would be able to continue to broadcast on FM while they plan towards digital.
- 21. There was a consensus among respondents that the case for smaller local stations to be able to renew their licences was particularly strong, given that these stations would be less able to absorb the inherent costs and disruption of readvertising without a significant impact on their services.
- 22. It was also broadly agreed in the course of the initial consultation that if any licences were to be renewed, then an eight year period, or even longer, would be preferable. This was on the basis that:
 - a. The industry is now committed to and invested in a digital future, and so there is no longer a need to have regular renewals to ‘keep the pressure on’;
 - b. A longer renewal period would give stakeholders time to plan ahead, and allow smaller enterprises to take significant steps towards digital;
 - c. Allowing longer renewals would create greater certainty, including allowing for an assessment of the impact of small-scale DAB, and encourage further investment;
 - d. The case for renewal of licences in five years’ time would be even stronger than it is now (as one respondent said, in view of the expected continued decline in analogue listening: *“readvertised licences are unlikely to be attractive to many new entrants, facing ever-declining audiences and so a relicensing process at that point would simply result in increased cost for Ofcom and for incumbent stations in reapplying”*);
 - e. An extended renewal may take the industry to a point where analogue listening is so diminished that switchover will happen naturally in any event.
- 23. In response to the specific proposal that licences be extended for ten years, the feedback was also generally very positive. One respondent said that they *“believe this will provide comfort to both investors and employees allowing us to continue to innovate and invest in content and provide the best service we can to our listeners”*, while another noted that *“an extension of ten years should make it even more likely that all listening will be digital at the end of that period.”*
- 24. On the other hand, some respondents described a possible risk that analogue broadcasters might choose to ‘exploit’ a long renewal by scaling down their commitment to digital. Evidence since the issues were last considered in 2015, however, has been of increased support for digital radio through increased investment in new stations. Other respondents suggested that any longer renewal

should come with a commitment from the broadcaster in question to fund the investment required to fulfil licence obligations in terms of content requirements.

25. It was noted that there is currently significant variance in expiry dates (these being dependent on when a given licence was initially taken up). As such, it was suggested that all licence expiry dates could be aligned - an approach which the government took in 2015 when extending all local multiplex licences to a common end date of 31 December 2030. However, the consensus among respondents was a preference for maintaining the current arrangements.

Options for digital carriage (including additional proposal (a))

26. There was general support for the principle that stations should be able to take carriage on one or more small-scale multiplexes instead of a local multiplex, on the basis that the likely lower costs of the former will remove a barrier to entry for smaller operators, although it was also highlighted - as noted at paragraph 22(a) above - that digital already forms a core part of many stations' business in any event.
27. As regards the proposal to unlink analogue renewals from digital carriage, however, the feedback was mixed.
28. In support of the proposal, a number of respondents it was argued that:
- a. Digital is now so well-established that the link is no longer necessary. In the words of one respondent, DAB is *"a 'must have' for effective distribution"*;
 - b. Taking this step would be of particular value to smaller stations - indeed, one respondent believed that *"there are a number of stations whose financial sustainability would be far more likely if there were a relaxation around this requirement"*.
29. However, others were less convinced. It was noted by respondents that:
- a. Stations already on DAB could take their services away, depriving listeners of a favourite station and damaging the trust that listeners currently have in digital radio;
 - b. Some local DAB multiplexes could become unviable were stations not required to provide a digital service as a condition of renewing their analogue licence.
30. Some alternative suggestions were put forward, including limiting the digital requirement to larger stations, or making it more flexible by allowing smaller stations to renew subject to a commitment to provide a small-scale DAB service once such a multiplex is licensed in their area. We are very grateful for this feedback, but

it is clear that the proposal raises a number of complex issues and that it would be more appropriate to consider this again in further detail as part of future [longer-term plans for radio deregulation](#). Given the importance of working through the implications of these options and the pressing need to resolve the situation with analogue licences, we do not propose to take steps to incorporate these suggestions as part of our legislative response to this consultation.

Other feedback received

31. Some of the written feedback set out arguments for the continuation of analogue services (i.e. as compared to these being switched off as part of a switchover to digital). The consultation covered the narrow issue of analogue licences and renewals and did not discuss any future options for a possible digital radio switchover.
32. While any future digital switchover timetable set would certainly have consequences for analogue broadcasting, the specific issue of whether any analogue services should be switched off is being considered separately as part of a wider review of radio and audio in the UK (which is due to report in March 2021), and so these issues fall outside the direct scope of this consultation.
33. A small number of responses suggested that there was a case for dealing with AM and FM licences differently, on the basis of expressed concerns regarding high costs of and a diminished listenership for AM transmissions. Although we agree that AM listening is declining faster than FM listening, we did not see any reason to treat AM and FM services differently, though we note that the shift away towards digital listening is likely to reduce demand for AM licences in the next five years.
34. One respondent suggested restricting renewals to stations offering a 100% digital simulcast of their analogue service (rather than being able to nominate a national service in accordance with ss104AA, 104AB and 104AC Broadcasting Act 1990). With particular regard to small-scale DAB, it was also suggested that multiplex owners might ‘flood’ their services with their own stations, and that small-scale DAB may not be viable for many commercial operators due to a lack of scale.
35. We agree that the growth of digital radio over the past five years has led to multiplex capacity constraints. There is a need to look at the long-term capacity needs in the medium term, and this is something that will be addressed as part of the radio and audio review that is due to report in March 2021². As regards the viability of small-scale DAB, we note that in the region of 150 such stations are currently broadcasting on the ten trial multiplexes and that Ofcom’s consultation suggests a significant demand for small-scale capacity. However the progress to licence small-scale DAB is

² The Digital Radio & Audio Review - Terms of Reference for the Review were [announced on 27 February 2020](#)

likely to be slower than hoped for, due to the challenges facing commercial and community radio as the result of the coronavirus pandemic.

Government's Response

36. We have fully considered all of the consultation responses, both written and oral.
37. In terms of option 1 (the do-nothing option), we acknowledge that readvertising analogue commercial radio licences may stimulate new entry into the market, and / or incentivise incumbent stations to improve their offerings in order to win back their licences. We appreciate that there remains a significant audience on analogue for new commercial stations to target, and we acknowledge that there would at least be interest in bidding for the national licences, were these to be readvertised.
38. We also agree that the consolidation of radio over the past 15 years has reduced the number of radio groups, but that the growth of digital has increased choice with more national and local stations than ever before. The consolidation has helped radio to reduce costs and streamline its services, leaving the sector in a stronger position to weather the economic disruption of the coronavirus pandemic than would have been the case in the past.
39. The main disadvantage of relicensing - as set out by the vast majority of industry respondents - is the imposition of significant costs on the industry at what is a challenging time given the trifold challenge of the transition from analogue to digital, the growth in new forms of online audio content and the sector's continuing dependence on advertising - which in turn is facing the challenges presented by the coronavirus pandemic. We further note that there was no expressed public desire for licences to be readvertised.
40. As regards options 2 and 3 (allowing licences to be renewed for an additional five or eight years), the responses that we received clearly set out a range of important benefits of renewing the licences of larger and smaller local stations, including giving all stations the long-term security to plan and develop services as radio's move to digital continues.
41. While we acknowledge that the potential benefits for smaller local stations are likely to be greater, the responses were not able to come to a clear view on where the line between larger and smaller stations could be drawn. The views expressed during the stakeholder sessions addressed the same question without a satisfactory response. A stronger case can be made for advertising the three national licences, particularly the national FM licence (currently held by Classic FM), but there was no real evidence that doing so, when set against the disruption of national relicensing, would achieve any material benefits.
42. In terms of the duration of any licence renewals, the previous renewal was for an additional five years, on the basis that this would provide certainty to the industry

and listeners and minimise disruption and costs, while maintaining the focus within industry in the direction of digital.

43. The responses to consultation clearly demonstrated that:

- a. There is support from across the commercial radio landscape for the principle of further licence renewal, and no significant expressed desire from members of the public for a change in approach;
- b. The industry continues to support the government's policy objective of working towards a digital future for radio and supporting industry through this transition, but wants a longer period of renewal to give greater security.

44. We agree that the position has changed since 2014, when the issue was last considered. In particular, digital is now more firmly established, and so one of the main arguments for a shorter renewal period - to provide an incentive for broadcasters to support digital radio - carries less weight. The difficulties that the industry is facing due to the impacts of the coronavirus pandemic suggest that new local radio licence holders are likely to struggle to cover start-up costs and reach profitability in the period between the availability of licences (largely 2023 and later) and the likely natural endpoint for analogue listening towards the end of the decade. **For this reason we believe there are very strong arguments to allow a further renewal of local licences.**

45. We have given particularly careful consideration to whether national licences ought to be treated differently and re-advertised when they expire in 2022. We acknowledge that there remains some economic value to these licences, particularly for the national FM licence, which - as a number of respondents, including Love Sport, argued - could be reflected in a new cash bid process.

46. In this regard, however, we also acknowledge that when Ofcom assessed the annual national licence fees in 2010 and 2017 - albeit against the backdrop of different levels of digital penetration, and therefore different assumptions about barriers to entry and audience levels - they concluded on [both occasions](#) that the value of holding these licences was not significant and that these fees should be set at a nominal level to reflect the minimal economic value for a new entrant holding these licences.

47. On balance, we have concluded that there are sufficient routes to market for new entrants - including by acquisition of one of the existing analogue licences or the creation of stations on DAB, given the increased availability of DAB capacity with the launch of the second national multiplex in 2016 and the expansion of local DAB coverage. Our assessment, which reflects the views of respondents, is that the value of an analogue licence is likely to be relatively low and to diminish further as digital

listening grows. **We are not, therefore, sufficiently convinced that there are any sufficiently strong or compelling arguments for readvertisement of national licences.**

48. In terms of the length of time for which licences should be renewed, we have taken into account the feedback from industry which suggested that at least eight years would be reasonable, with strong arguments made for a slightly longer period to cover the expected lifespan of analogue radio broadcasting to the early 2030s - when more than 80% of all radio to be listening is likely to be digital even if left entirely to market trends.
49. We agree that the transition to digital is sufficiently advanced that there is no longer a need to keep pressure on broadcasters by way of a shorter renewal period. We also note the steady transition from analogue to digital radio listening, and are inclined to agree that this is likely to take matters towards a natural endpoint for analogue broadcasting by the end of the decade.
50. Allowing for an additional two years' renewal - as strongly supported in our supplementary consultation - would provide more clarity and security for the industry (including for advertisers and investors), while maintaining momentum towards a potential digital switchover. This would give additional certainty over licensing, which will be helpful as commercial radio deals with the impacts of Covid-19. It may also in essence amount to an end date for analogue commercial radio, and as such may in practice supersede the provisions in the Digital Economy Act 2010 allowing for a two year notice period prior to licence termination.
51. For this reason, **we propose to proceed in accordance with the proposal set out in our supplementary consultation, and make provision for all licences to be renewed for an additional ten years** (on top of any renewal or renewals to which a licence may be entitled, but which have not yet been taken up).
52. It was suggested in the course of one of our seminars that all licences could be given a common end date. This would be a complex change that would set a presumptive backstop switchover date, and we consider that this would be undesirable and unnecessary. In the event that following the [digital radio and audio review](#), the government decides to set firm dates for digital switchover, there are already powers in the Digital Economy Act 2010 - as noted above - to terminate licences on (at least) two years' notice that achieve broadly the same outcome.
53. We have carefully considered the position as to the requirement for stations to take digital carriage, in light in particular of the representations from small stations who are required to take carriage on local multiplexes which may have too large a coverage footprint or be too costly for stations with small coverage areas.

54. It was widely acknowledged in the course of our consultation that requiring stations to provide a digital service in order to take advantage of an analogue renewal has been a successful policy. Two further points have arisen which we consider ought to be taken into account:

- Firstly, for the majority of commercial stations, their digital service is now an integral part of their business. This is strong evidence in favour of the proposition that the policy has in large part 'done its job';
- Secondly, stations are facing huge challenges presented by the impact of the Covid-19 pandemic, particularly with regard to advertising revenues.

55. However, when we sought further views from industry on potentially allowing renewals without any condition of DAB carriage, the response was mixed. In particular, while it was acknowledged that digital is well-established and therefore that the proposed change might amount to a helpful simplification, multiplex operators in particular were not convinced that the arguments in favour of removing the digital carriage requirement had been fully made out.

56. As such, we propose to proceed as set out within the initial consultation, and continue to make analogue renewals contingent on licensees taking digital carriage. In accordance with the consensus from respondents that small-scale DAB is likely to be a practical and more cost-effective alternative to local or national carriage for smaller stations, our Legislative Reform Order will make provision to allow stations to satisfy the digital carriage condition where that digital service is provided on a small-scale multiplex.

Next Steps

57. Subject to the necessary approvals, the government will now proceed to make an amendment via a Legislative Reform Order to the relevant legislation – namely sections 103B (which covers national licences) and 104AA (which covers local licences) of the Broadcasting Act 1990 – in order to:

- a. allow these licences to be renewed for an additional ten year period (beyond that already provided for within the legislation); and
- b. allow the requirement for the licence holder to take digital carriage to be satisfied where that carriage is on a small-scale multiplex.

58. If you have any further comments about the consultation process or this Response, please contact us via the following:

FAO Commercial Radio Analogue Licence Renewal Consultation
Media Team
Department for Digital, Culture, Media and Sport
4th Floor, 100 Parliament Street
London
SW1A 2BQ

analoguelicence@culture.gov.uk.

Annex A: Notes of seminars

Seminar One

11th February 2020, 2pm

Radiocentre, 55 New Oxford Street, London WC1A 1BS

In attendance:

Ian O'Neill OBE	Head of Radio, DCMS
Harry Reardon	Senior Policy Advisor, DCMS
Matt Payton	Radiocentre
Michael Ireland	Radiocentre
Jason Bryant	Nation Broadcasting
Glyn Jones	Arqiva
Tony Lit	Sunrise Radio
Paul Chantler	Fix Radio
Will Harding	Global
Piers Collins	Wireless
Chris Hurst	Dee Radio
Tony Delahunty	Mansfield 103.2
Steve Orchard	Quidem
Yvette Dore	Digital Radio UK
Kelvin MacKenzie	Love Sport
Steve Hodge	Love Sport
Travis Baxter	Bauer
Gregory Watson	MuxCo

Introduction

DCMS officials set out the intention of the seminar, which was to explore in greater depth industry views on the three proposed options in the government's consultation on the further renewal of analogue commercial radio licences.

Discussion

Option 1: Do nothing (i.e. no further renewals)

There was some support among the smaller stations and groups represented for this proposal in relation to the three national analogue licences. Comments included:

- There is significant value in holding a national analogue licence given the audience share that these continue to command, so they should be opened up again to competition, with their value being dictated by market forces;
- If the national licences were readvertised, there would be interest within the industry in bidding for them, not least given the trend towards national rather than local listening;
- Readvertising would amount to an investment into the future of FM and AM platforms where there was still a large base of listeners;
- Any disruption that readvertising might cause to the industry would not be significant - particularly if this were limited to national licences - and Ofcom could absorb the resource costs;
- The argument has changed in terms of how much it would cost to build up a national brand, and the stations being licensed on digital are showing that there is competition out there;
- If FM and AM are likely to still be around in ten or twenty years' time, then it would be wrong to keep renewing licences especially as DAB was now firmly established;
- While many incumbent stations would retain their licences after an open competition, there are areas where they would not, and this would be a means of bringing in better operators to replace poorer incumbents;
- If a new station wins a licence, the previous holder can continue to broadcast over digital, and the overall effect would be increased choice for the listener.

Among those who were opposed to readvertisement, including Global and Bauer, it was suggested that:

- It would be very disruptive for smaller local stations to be required to re compete for their licences;
- The barriers to entry into the market are very low - stations can launch on digital and online and make money, so renewal of analogue licences would not prevent new stations from launching;
- The industry's priorities should be managing the transition to digital and ensuring investment in UK-originated content, branding and distribution, and readvertising analogue licences would not help with either of these;
- The value that could be recouped by the government by way of market-driven increases in licence or transmission fees would be relatively small. Two exercises by

Ofcom (in 2010 and 2017) set a nominal licence fee to reflect the real value of licences over the licensing period;

- Changes to the current position would give new licence-holders an incentive to maximise the value of their analogue licence, rather than continue the move towards digital;
- The current structure of licence renewals has helped drive the UK radio market towards digitisation, increasing choice while enabling the sector to remain sustainable.

There was some discussion about whether larger and smaller local licences should be treated differently, and broad consensus that at least some local licences should be renewed but with different views about where the threshold would be drawn and what should happen to stations on the 'wrong' side of the line. It was suggested that smaller local stations which were also broadcasting on digital could be allowed to extend, with larger stations being required to compete; against that, it was argued that any line that was drawn on size would be arbitrary and give rise to inconsistency.

Options 2 / 3: renewal of 5 / 8 years in length

Most comments took the view that if there were to be a further extension of at least some licences, this should be for longer than the durations proposed. Comments included:

- If a 'short term' (i.e. five year) extension is granted now, absent a date for digital switchover, this would probably result in DCMS having to repeat the current exercise in five years' time;
- Local licences should be extended for as long as possible (eight years as a minimum, with 12 years preferred), particularly given that Ofcom already has the power to terminate all licences on two years' notice in any event;
- There is no longer any need to 'hold the industry's feet to the fire' with shorter renewals - significant investment has been made in digital, and stations are not going to move away from it now;
- Licences should all be given a common end date, rather than the current system whereby new entrants start at the beginning of the process and can subsequently take up all of the extensions that older stations have been granted.

Small-scale multiplexes

There was broad consensus that the principle of tying in renewals with requiring stations to broadcast over digital should allow for stations to take carriage on small-scale multiplexes. It was noted that:

- Some regional multiplexes may be full;
- Legislation may need to provide for the possibility of stations taking carriage on multiple small-scale multiplexes, the total coverage of which adds up to a certain proportion of their analogue radius;
- There may be issues where the relevant small-scale multiplex has not yet been launched, and good reasons why DCMS should simplify the regime by relaxing the requirements where there was no small-scale multiplex.

Seminar Two

26th February 2020, 2pm

Radiocentre, 55 New Oxford Street, London WC1A 1BS

In attendance:

Ian O'Neill OBE	Head of Radio, DCMS
Harry Reardon	Senior Policy Advisor, DCMS
Siobhan Kenny	Radiocentre
Matt Payton	Radiocentre
Michael Ireland	Radiocentre
Colin Everitt	Communicorp
James Keen	Tindle Radio Group
Glyn Jones	Arqiva
Surjit Ghuman MBE	Panjab Radio
Adam Findlay	DC Thomson
Kevin Bennett	Premier
Travis Baxter	Bauer
David Duffy	Niocast
John Evington	Niocast
Geraldine Allinson	KMFM
Matt Ramsbottom	Revolution
Michael Dobson	Revolution
Will Harding	Global
Tony Psillou	London Greek Radio
John Kyriakides	London Greek Radio

Introduction

DCMS officials set out the intention of the seminar, which was to explore in greater depth industry views on the three proposed options in the government's consultation on the further renewal of analogue commercial radio licences.

Discussion

Option 1: Do nothing (i.e. no further renewals)

None of the attendees at this seminar expressed support for this option.

Options 2 / 3: renewal of 5 / 8 years in length

The attendees were in agreement that analogue licences should be renewed, with the discussion centring around the favoured duration. Comments included:

- Stations need to be able to invest in the future with a degree of certainty, particularly given the increasing competition for audiences presented by on demand audio;
- Listeners would lose out if this investment was diverted towards licensing rather than content, and there was a risk of much-loved stations being forced off air;
- Readvertising would not be the best way to introduce new entrants, not least because readvertised licences where the incumbent reapplies are rarely awarded other than to that incumbent;
- The renewal length should be eight years at a minimum, and 12 years should be strongly considered - this would provide additional stability, and would be unlikely to limit new entrants;
- The powers exist to terminate licences on two years' notice in any event under the Digital Economy Act 2010;
- Licences should be 'yours to get wrong' i.e. unless and until you're not serving your market, or otherwise not adhering to the licence requirements;
- A further renewal could be expressed as being to the point of digital switchover, although this might be difficult to achieve legislatively in the available time.

Small-scale multiplexes

Some questions were raised about the rollout of SSDAB. In particular, it was noted that:

- Not all areas of the UK will be capable of being licensed at the same time, and this should be taken into account when drafting any legislation;
- There will need to be transitional arrangements, e.g. if a small-scale multiplex is starting up but not yet operational. It was noted that Ofcom have some discretion to extend licences where there was no multiplex service, and DCMS should consider the option of unlinking renewals from carriage to simplify the regime.
- SSDAB may not be a viable option in some areas, e.g. certain regions of Scotland - while it may be cheap, it may not be possible to reach a significant audience.

Annex B: List of organisations that provided a written response

Panjab Radio
Love Sport
Niocast Digital
Arqiva
Radio Clatterbridge
Nation Broadcasting
Royal Scottish National Orchestra
Ofcom Advisory Committee for Scotland
Hospital Broadcasting Association
The Office of the Secretary of State for Wales
Communicorp UK
DC Thomson
Global
The All-Party Parliamentary Group on Commercial Radio
Bauer
Wireless
Radiocentre
Dee Radio Group
Quidem
Voice of the Listener & Viewer
Sunrise Radio
Triple Muxco Somerset Ltd
Central FM
MuxCo